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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 25 NUMBER 14

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(Includes adopted rules filed through June 25, 1993)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 17, 1993
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 21, 1993

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

Interested persons comment deadline **3052**

COMMUNITY AFFAIRS
Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees ..... 3053(a)
ENVIRONMENTAL PROTECTION AND ENERGY
1994-95 Fish Code ..... 3053(b)
HEALTH
Access to death records ..... 3115(a)
Pilot low-cost spaying and neutering clinic surgery fees .. 3116(a)
Hospital financing ..... 3117(a)
Hospital reimbursement: uncompensated care ..... 3125(a)
HIGHER EDUCATION
Licensing and degree approval standards ..... 3057(a)
HUMAN SERVICES
Independent mental health clinics: personal care assistant services ..... 3058(a)
LABOR
Occupational Safety and Health Review Commission ..... 3059(a)
LAW AND PUBLIC SAFETY
Board of Marriage Counselor Examiners rules ..... 3060(a)
Board of Psychological Examiners rules ..... 3062(a)
State Board of Shorthand Reporting rules ..... 3079(a)
Board of Social Work Examiners rules ..... 3081(a)
Kosher Enforcement Bureau: sale of food represented as kosher ..... 3086(a)
Motor carrier safety ..... 3091(a)
Thoroughbred racing: intent of medication rules ..... 3099(a)
Thoroughbred racing: administering medication to respiratory bleeders ..... 3100(a)
Thoroughbred racing: limitations on entering or starting ..... 3101(a)
Thoroughbred racing: medication ..... 3102(a)
Thoroughbred racing: trifecta ..... 3103(a)
Harness racing: intent of medication rules ..... 3104(a)
Harness racing: administering medication to respiratory bleeders ..... 3105(a)
Harness racing: trifecta ..... 3106(a)
TRANSPORTATION
Restricted parking and stopping along Route 29 in Lambertville, Route 35 in Berkeley Township, Route 45 in Woodbury, and Route 77 in Bridgeton ..... 3127(a)
Midblock crosswalk along Route 27 in Franklin Township and North Brunswick ..... 3128(a)
State Highway Access Management Code ..... 3129(a)
Employer Trip Reduction Program (ETRP) ..... 3132(a)
NJ TRANSIT: Section 16(b)(2) Capital Assistance Program ..... 3142(a)
NJ TRANSIT: Small Urban and Rural Area Public Transportation Program ..... 3144(a)
TREASURY-TAXATION
Division of Taxation policies and procedures ..... 3107(a)
CASINO CONTROL COMMISSION
Imprest inventory of changepersons ..... 3107(b)
Complimentary services, items, cash, and noncash gifts ... 3108(a)
Gaming chips ..... 3111(a)

RULE ADOPTIONS

COMMUNITY AFFAIRS
Uniform Construction Code: prototype plan review ..... 3147(a)
Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program ..... 3148(a)
ENVIRONMENTAL PROTECTION AND ENERGY
Natural Areas System ..... 3150(a)
Open lands management ..... 3153(a)

(Continued on Next Page)

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **August 18, 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.

RULEMAKING IN THIS ISSUE—Continued

Fish and Game Council: license, permit and stamp fees ..... 3154(a)
Hazardous waste listings: F024 and F025 ..... 3155(a)
Environmental Cleanup Responsibility Act (ECRA) rules: operative date of amendments ..... 3155(b)
Toxic Catastrophe Prevention Act Program ..... 3156(a)

HEALTH
Hospital reimbursement: bill-patient data submissions; revenue cap monitoring ..... 3205(a)

HUMAN SERVICES
Community mental health services: children's partial care programs ..... 3209(a)
Pre-Placement Program for patients at State psychiatric facilities ..... 3213(a)
Long-term care services: elimination of salary regions ..... 3215(a)
HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery ..... 3216(a)
New Jersey Care: specified low-income Medicare beneficiaries ..... 3217(a)

CORRECTIONS
Investigation of adult and juvenile inmate property claims: administrative changes ..... 3218(a)

INSURANCE
Real Estate Commission: transmittal by licensees of written offers on property ..... 3219(a)
Joint insurance funds for local government units providing group health and term life benefits ..... 3220(a)

LAW AND PUBLIC SAFETY
Practice of optometry: permissible advertising ..... 3232(a)
Toy and bicycle safety ..... 3235(a)
Thoroughbred racing: daily triple payoff in dead heat for win ..... 3238(a)

TRANSPORTATION
State Highway Access Management Code: administrative correction ..... 3238(b)

TREASURY-GENERAL
State Development and Redevelopment Plan: voluntary submission of muncipal and county plans for consistency review ..... 3238(c)

TREASURY-TAXATION
Corporation Business Tax: financial businesses ..... 3239(a)

ELECTION LAW ENFORCEMENT COMMISSION
Public financing of general election candidates for Governor ..... 3240(a)

CASINO CONTROL COMMISSION
Organization and operation of Commission ..... 3240(b)

PUBLIC NOTICES

EDUCATION
Public testimony session regarding N.J.A.C. 6:2, Appeals to State Board ..... 3242(a)

ENVIRONMENTAL PROTECTION AND ENERGY
Sussex County water quality management: Wantage Township ..... 3242(b)

HUMAN SERVICES
State Legalization Impact Assistance Grant Anti-Discrimination Employment Education Program ..... 3242(c)

INSURANCE
Title insurance and licensed producers: agency response to rulemaking petitions ..... 3242(d)

LAW AND PUBLIC SAFETY
Acupuncture Examining Board: rulemaking petition regarding physician training ..... 3243(a)
Forfeited property distribution: agency response to rulemaking petition regarding law enforcement funds administration ..... 3243(b)

WATERFRONT COMMISSION OF NEW YORK HARBOR
Rules and regulations of Waterfront Commission ..... 3244(a)

INDEX OF RULE PROPOSALS AND ADOPTIONS 3263

Filing Deadlines

August 16 issue:	
Proposals	**July 19**
Adoptions	**July 26**
September 7 issue:	
Proposals	**August 9**
Adoptions	**August 16**
September 20 issue:	
Proposals	**August 20**
Adoptions	**August 27**

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

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Incentive Note Purchase Program Fees

Proposed Amendments: N.J.A.C. 5:80-23.9

Authorized By: New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.
Authority: N.J.S.A. 55:14K-5s and 12a.
Proposal Number: PRN 1993-390.

Submit comments by August 18, 1993 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing for the construction, rehabilitation or improvement of housing.

The Housing Incentive Note Purchase Program is designed to enable the Agency to participate with banks and other lending institutions in the financing of residential housing for owner occupancy. The Agency will enter into an Agreement with a lending institution to purchase a portion of the total construction loan (up to 30 percent). The Agency's obligation to purchase will be triggered upon a default on the loan by the developer/builder. Upon a default, the Agency will purchase up to 30 percent of the loan amount and thereby assume 30 percent of the risk of financing.

New rules governing the Housing Incentive Note Purchase Program were adopted by the Agency at N.J.A.C. 5:80-23 and became effective on July 19, 1993 (see the notice of adoption published separately in this issue of the New Jersey Register). The adopted rules contain provisions regarding fees at N.J.A.C. 5:80-23.9. The proposed amendment to these rules involve the fee section only. The amendments specify the exact amount of the fees to be charged to participants in the program.

Social Impact

The Housing Incentive Note Purchase Program is designed to encourage banks (and other lending institutions) to make construction financing available to builders/developers wishing to complete the construction of owner-occupied residential housing developments that are in the hands of regulators and lenders, or for those developer-owned, partially-constructed developments for which construction financing is no longer available. This will be done through the provision of a Note Purchase Fund. The purpose of this program is to promote the completion of stalled projects, generate new residential housing production and provide employment opportunities in the construction sector.

Economic Impact

The Housing Incentive Note Purchase Program will aid in the stimulation of the housing construction industry. The Agency has committed $10 million to initiate the program. As the Agency will cover up to 30 percent of the construction loan amount, the program should result in $100 million of construction financing from participating lending institutions. Applicants and participants in the program will pay the prescribed fees needed to defray the Agency's costs in administering the program.

Regulatory Flexibility Analysis

The proposed amendments will impact upon lending institutions and developers/builders, 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. As to reporting, recordkeeping and compliance requirements, the program rules require participants to file an application and supporting documents and, if eligible, require participants to enter into loan documents with the Agency. The proposed amendments set forth specific application, commitment and purchase fees. The Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed amendments. Because the program is strictly voluntary, and is beneficial to the participants and due to the minimal nature of the compliance requirement, no differentiation in the compliance requirements based upon business size is proposed.

Full text of the proposed amendments follows:

5:80-23.9 Fees

(a) No application for a housing incentive note purchase agreement shall be accepted unless it is accompanied by a nonrefundable application fee [in an amount to be established from time to time by the Agency] **of $3,500.**

(b) No commitment to enter into a housing incentive note purchase agreement shall be issued by the Agency pursuant to N.J.A.C. 5:80-23.5 unless on or before the date of issuance of such commitment there has been paid to the Agency a nonrefundable commitment fee of $9,000.

[(b)]**(c)** No housing incentive note purchase agreement shall be entered into by the Agency unless on or before the date of entering into such agreement, there has been paid to the Agency a nonrefundable purchase fee **(the "HINPA Fee")** in an amount [to be established from time to time by the Agency] **equal to one percent of the principal amount of the respective loan in which an undivided interest is being purchased.**

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

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council
1994-95 Fish Code

Proposed Amendments: N.J.A.C. 7:25-6

Authorized By: Fish and Game Council, Cole Gibbs, Chairman.
Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq.
DEPE Docket Number: 38-93-06.
Proposal Number: PRN 1993-378.

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

Tuesday, August 10, 1993, at 7:30 P.M.
Assunpink Wildlife Convention Center
Eldridge Road
Assunpink Wildlife Management Area
Robbinsville, New Jersey 08691

Submit written comments by August 18, 1993 to:
Robert McDowell, Director
Division of Fish, Game and Wildlife
New Jersey Department of Environmental Protection and Energy
CN 400
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Fish Code (Code), N.J.A.C. 7:25-6, states when, by what means, at which location, in what numbers and at what sizes, fish may be pursued, caught, killed or possessed.

The proposed amendments to N.J.A.C. 7:25-6 for the 1994-95 fishing season are as follows:

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1. Opening day of the 1994-95 trout season has been set for April 9, 1994. All of the dates, throughout the Code, which are dependent on this date have been adjusted accordingly.

2. Dennisville Lake is to be restored to the list of trout stocked waters as the result of a satisfactory resolution of a local access problem.

3. Beavers Run Brook and Kymer's Brook, both of which are in Sussex County, are proposed for deletion from the listing of trout stocked waters because of habitat degradation and little utilization by fishermen.

4. Lake Hopatcong has been deleted from the "Holdover Trout Lake" category, because of its minimal year-round trout supporting capabilities. However, it will continue to be open to fishing, for species other than trout, during the preseason trout stocking closure period which applies to most trout stocked waters.

5. The "Major Trout Stocked Lakes" category, of Special Regulation Trout Fishing Areas, has been re-titled as "Holdover Trout Lakes" which better represents the management objective for this class of waters, which is to maximize the potential return of large trout that have survived and grown since their stocking in the preceding year. In an effort to increase this potential, it is proposed that there be a reduction in the daily possession limit from six trout to four trout during the period extending from the April opening day until May 31, and from four trout to two trout thereafter. It is anticipated that this will be more effective than the limitation to two trout over 15 inches with no decrease in the daily possession limit as relatively few freshly stocked trout fall into this 15 inch and above size category.

6. Minor revisions have been made in the manner and means of taking baitfish. The added limitation on net size was made to prevent people from using a net that would effectively block off the entire stream being netted. Also, the regulations, which previously applied only to Deal Lake, are now made applicable throughout the State.

7. Major revisions have been made to the format of the "nets" section (N.J.A.C. 7:25-6.11), but this has resulted in only minor changes in content. Basically, the regulations dealing with baitfish have been removed from this section as they are already addressed in the "baitfish" section (N.J.A.C. 7:25-6.10), and the three areas that were covered individually in this section have been consolidated into one. There had been some minor differences in fishing gear specifications between the three areas, but the rationale for these differences have been lost in antiquity and are no longer relevant to the current condition of the resource. It is also noted that over the last 20 years, no more than three such net permits have been applied for during any one year. Should the need arise, problems can be addressed through permit conditions fashioned to address a specific situation.

8. A section has been proposed, N.J.A.C. 7:25-6.22, to regulate the taking of snapping turtles, bull frogs and green frogs. Previously, provisions existed for the possession of these animals, but there were no provisions that described the legal means by which these animals could be taken, which, in fact, meant that there were no legal ways to take them. The bag limits and seasons were recommended by the professionals of the New Jersey Division of Fish, Game and Wildlife's Nongame Section, and are conservative in nature since the exact status of the resource is in question. Provisions have been proposed that would allow for the taking of these animals in excess of the daily bag limit and beyond the proscribed season through a permit process.

Social Impact

The major proposed changes deal primarily with the format of the Fish Code and not the content and, therefore, no social impact is anticipated except that the proposed changes should aid in the comprehension of the Code.

Some displacement of fishermen may occur as a result of the cessation of trout stocking in two currently trout stocked waters; however, lack of utilization was one of the primary reasons for their deletion from the list of trout stocked waters and many other trout stocked waters exist in close proximity to these waters.

The proposed new rule for snapping turtles, bull frogs and green frogs provide for a legal method of taking these species, such taking now being an illegal activity.

Economic Impact

No specific, significant economic impact or detriment is expected to arise from the proposed amendments since they are primarily a continuation, after annual review, of the existing freshwater fisheries program. Permitting programs allow for a recourse for those few individuals that might be impacted by the establishment of season and bag limits on frogs and turtles.

Environmental Impact

The proposed amendments should have a positive environmental impact in continuing the conservation, management and enhancement of the State's fisheries resources based on their current population, distribution and habitat status.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments would not impose reporting, recordkeeping, or other compliance requirements on small businesses, because small businesses are not regulated by N.J.A.C. 7:25-6.

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

SUBCHAPTER 6 [1993-94] **1994-95** FISH CODE

7:25-6.3 Trout Season and Angling in Trout Stocked Waters

(a) Except as provided in N.J.A.C. 7:25-6.4, 6.6 to 6.9, 6.18, 6.19 and (i) below, the trout season for [1993] **1994** shall commence 12:01 A.M. January 1, [1993] **1994** and extend to midnight March [21, 1993] **20, 1994**. The trout season shall re-open at 8:00 A.M. Saturday, April [10, 1993] **9, 1994** and extend to include March [20, 1994] **19, 1995**.

(b) Except as provided in N.J.A.C. 7:26-6.4, 6.6 and 6.7 and (i) below, it shall be unlawful to fish for any species of fish from midnight March [21, 1993] **20, 1994** to 8:00 A.M. on April [10, 1993] **9, 1994** in ponds, lakes or those portions of streams that are listed herein for stocking during [1993] **1994**.

(c) (No change.)

(d) Except as provided in N.J.A.C. 7:25-6.6 to 6.9, in trout-stocked waters [from] **for** which in-season closures will be in force, waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated, provided that in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April [16, 23, 30] **15, 22, 29**; May [7, 14, 21, 28] **6, 13, 20, 27**.

2. Black River—Route 206 Chester, to the posted Black River Fish and Game club property at the lower end of Hacklebarney State Park—April [15, 22, 29] **14, 21, 28**; May [6, 13, 20, 27] **5, 12, 19, 26**.

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April [12, 19, 26] **11, 18, 25**; May [3, 10, 17, 24] **2, 9, 16, 23**.

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April [12, 19, 26] **11, 18, 25**; May [3, 10, 17, 24] **2, 9, 16, 23**.

5. Metedeconk River, S. Br.—Bennetts Mills Dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April [12, 19, 26] **11, 18, 25**; May [3, 10, 17, 24] **2, 9, 16, 23**.

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April [16, 23, 30] **15, 22, 29**; May [7, 14, 21, 28] **6, 13, 20, 27**.

7. Paulinskill River and E. Br. and W. Br.—Limecrest Railroad Spur Bridge on E. Br., Sparta Township, and Warbasse Junction Road, Route 663, on W. Br., Lafayette Twp., to Columbia Lake—April [15, 22, 29] **14, 21, 28**; May [6, 13, 20, 27] **5, 12, 19, 26**.

8. Pequest River—Source to Delaware River—April [16, 23, 30] **15, 22, 29**; May [7, 14, 21, 28] **6, 13, 20, 27**.

9. Pohatcong Creek—Route 31 to Delaware River—April [13, 20, 27] **12, 19, 26**; May [4, 11, 18, 25] **3, 10, 17, 24**.

10. Ramapo River—State line to Pompton Lake—April [15, 22, 29] **14, 21, 28**; May [6, 13, 20, 27] **5, 12, 19, 26**.

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April [14, 21, 28] **13, 20, 27**; May [5, 12, 19, 26] **4, 11, 18, 25**.

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April [13, 20, 27] **12, 19, 26**; May [4, 11, 18, 25] **3, 10, 17, 24**.

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13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April [12, 19, 26] **11, 18, 25**; May [3, 10, 17, 24] **2, 9, 16, 23**.

14. Toms River—Ocean County Route 528, Holmansville, to confluence with Maple Root Branch and Route 70 to County Route 571—April [12, 19, 26] **11, 18, 25**; May [3, 10, 17, 24] **2, 9, 16, 23**.

15. Wallkill River—Lake Mohawk Dam to Route 23, Hamburg—April [12, 19, 26] **11, 18, 25**; May [3, 10, 17, 24] **2, 9, 16, 23**.

16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir, Monksville Reservoir and Lake Inez—April [16, 23, 30] **15, 22, 29**; May [7, 14, 21, 29] **6, 13, 20, 27**.

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force. Figure in parenthesis indicates the anticipated number of stockings to be carried out from April [12] **11** through May 31, provided that, in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1.-4. (No change.)

5. Cape May County

Dennisville Lake—Dennisville—(4)

West Pond—Cape May Courthouse—(4)

6. Cumberland County

Bostwick Lake—Friesburg—(3)

Cohansey River—Dam at Seeley's Pond to powerline above Sunset Lake, Bridgeton—(4)

Giampietro Park Lake—Vineland—(3)

Mary Elmer Lake—Bridgeton—(3)

Maurice River—Willow Grove Lake dam to Sherman Avenue, Vineland—(4)

Shaw's Mill Pond—Newport—(3)

7.-18. (No change.)

19. Sussex County

...

[Beavers' Run Brook—Beaver Run, entire length—(1)]

...

[Kymer's Brook—Andover, entire length—(2)]

...

20.-21. (No change.)

(g) (No change.)

(h) A person shall not take, kill or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April [10, 1993] **9, 1994** until midnight May 31, [1993] **1994** or more than [4] **four** of these species during the periods of January 1, [1993] **1994** to midnight March [21, 1993] **20, 1994** and June 1, [1993] **1994** through midnight March [20, 1994] **19, 1995** except as designated in N.J.A.C. 7:25-6.4 to 6.9.

(i) Spruce Run Reservoir, Hunterdon County, **Lake Hopatcong, Morris/Sussex County,** [Swartswood Lake, Sussex County,] and the Manasquan Reservoir, Monmouth County, will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March [21, 1993] **20, 1994** and extending to 8:00 A.M. April [10, 1993] **9, 1994** must be returned to the water immediately and unharmed.

7:25-6.4 Special Regulation Trout Fishing Areas—Fly Fishing Waters

(a) From 5:00 A.M. on Monday, April [19, 1993] **18, 1994** to and including March [20, 1994] **19, 1995** the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, [1993] **1994** to midnight March [21, 1993] **20, 1994** and from 8:00 A.M. on April [10, 1993] **9, 1994** to midnight March [20, 1994] **19, 1995** the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:

1. (No change.)

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

7:25-6.5 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas

(a) The following stream segments are designated as Seasonal Trout Conservation Areas and are subject to the provisions at (b) below governing these areas during the period of May [24, 1993] **23, 1994** through March [20, 1994] **19, 1995**.

1.-2. (No change.)

(b) (No change.)

7:25-6.6 Special Regulation Trout Fishing Areas—Wild Trout Streams

(a) (No change.)

(b) The following shall apply to the Wild Trout Streams designated at (a) above:

1.-4. (No change.)

5. During the period extending from 8:00 A.M. April [10, 1993] **9, 1994** to September 15, [1993] **1994**, no person shall have in possession while fishing any more than two legally sized dead, creeled or otherwise appropriated trout. No trout may be killed or possessed during other times of the year. Any number of trout may be caught provided they are immediately returned to the water unharmed.

6. (No change.)

7:25-6.8 Special Regulation Trout Fishing Areas—Trophy Trout Lakes

(a) (No change.)

(b) The following [rules] **regulations shall** apply to the Trophy Trout Lake designated at (a) above:

1.-3. (No change.)

4. The season for lake trout shall extend from 12:01 A.M., January 1, [1993] **1994** to midnight, September 15, [1993] **1994** and from December 1, [1993] **1994** to midnight, September 15, [1994] **1995**.

5. (No change.)

7:25-6.9 Special Regulation Trout Fishing Areas—[Major] **Holdover** Trout [Stocked] Lakes

(a) The following lakes are designated as [Major] **Holdover** Trout [Stocked] Lakes:

1. Canistear Reservoir;
2. Clinton Reservoir;
3. [Lake Hopatcong] **Swartswood Lake**;
4. Monksville Reservoir; [and]
5. Wawayanda Lake[.]; **and**
6. **Sheppard's Lake, Passaic County.**

(b) The following apply to the [Major] **Holdover** Trout [Stocked] Lakes designated at (a) above:

1.-2. (No change.)

3. A person shall not take, kill or have in possession, in one day more than [six] **four** in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof, during the period extending from 8:00 A.M. April [10, 1993] **9, 1994** until May 31, [1993] **1994** or more than [four] **two** of these species during the periods of January 1, [1993] **1994** to midnight March [21, 1993] **20, 1994**. Trout if taken during the period commencing at midnight, March [21, 1993] **20, 1994** and extending to 8:00 A.M., April [10, 1993] **9, 1994** must be returned to the water immediately and unharmed.

7:25-6.10 Baitfish

(a) Except as provided for in trout-stocked waters listed in N.J.A.C. 7:25-6.3, [6.11,] and (b) and (c) below, up to 35 baitfish per person per day may be taken from the freshwaters of the state with a seine not over 50 feet in length in all ponds and lakes which have an area of over 100 acres, and in all other waters with a seine not [over] **to exceed** 30 feet in length, **or half the width of the stream at the point of use, whichever is less**, year-round. Minnow traps not larger than 24 inches in length with a funnel mouth no greater than [2] **two** inches in diameter or an umbrella net no greater than 3.5 feet square may be used in any of the freshwaters of the state.

(b) (No change.)

(c) [In Deal Lake, up] **Up** to 35 per day of alewife or blueback herring, in the aggregate, may be taken per person with a dip net

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not more than 24 inches in diameter, **hook and line** or as otherwise provided for in (d) below. Possession limit is one day's limit.

(d) (No change.)

7:25-6.11 Nets

(a) Except as provided for the taking of baitfish, it shall be illegal to take fish from the freshwaters of the State[, including tidal freshwaters,] by means of nets except under special permit issued by the division at its discretion and as hereafter provided for **in the tidal freshwaters of New Jersey, other than the Delaware River[.]:**

[(b) In the tidal freshwaters of New Jersey other than the Delaware River, its tributaries and tributaries to Delaware Bay:]

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character except for fyke nets and [nets commonly] **bait seines** used for the purpose of taking of baitfish, from Saturday at 2:00 P.M. until the following Sunday at 12 midnight.

[(2) It shall be legal to take baitfish by means of a bait seine not more than 150 feet in length or a dip net not to exceed 24 inches in diameter.]

[3.]**2.** It shall be legal to take foodfish as defined in N.J.A.C. 7:25-6.2 by the following means:

i. Haul seines, the mesh of which shall not be [larger than three] **less than two and three quarter** inches stretched while being fished and not to exceed 70 fathoms in length, whether singly or attached, for all species except striped bass[.] **may be used from** November 1 to April 30.

ii. Fykes, with leaders shall not exceed 30 [fathoms] **feet** in length and no part of the net or leaders to be larger than three inches stretched mesh while being fished for all species excepting striped bass[.] **may be used from** November 1 to April 30.

iii. Miniature fykes or pots for the taking of **carp**, catfish, suckers and eels, the same not to exceed 16 inches in diameter[.] **may be used from** March 15 to December 15. **All other species of fish which may be caught must be immediately returned, unharmed, to the waters from which they were taken.**

iv. Drifting gill nets, the smallest mesh of which shall be five **and one quarter** inches **stretched measure** while being fished, and shall not exceed [50 fathoms] **100 feet** in length, for all species excepting striped bass[.] **may be used from** March 1 to June 15.

v. Gill nets with a mesh not smaller than two and three quarters inches stretched measure, while being fished and not exceeding 200 feet in length may be used from March 1 to June 10 for the purpose of taking blueback herring only.

[(c) In the tidal waters of the tributaries of the Delaware River, in New Jersey, between Trenton Falls and Birch Creek:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character, except for fyke nets and nets commonly used for the purpose of taking baitfish, from Saturday at 2:00 P.M. until Sunday at 12:00 midnight next ensuing in each week.

2. It shall be legal to take baitfish by means of minnow seine not more than 100 feet in length; a dip net not more than 5 feet square; a minnow trap, the opening of which shall not be more than 1¼ inches in diameter; or a scoop net with a single handle and with a diameter of not more than 2 feet.

3. It shall be legal to take foodfish as defined in N.J.S.A. 7:25-6.2 by means of a seine, gill net, eelpot or fyke net, each without wings, or a parallel net at the edge of low water.

4. It shall be illegal to take or attempt to catch and take Atlantic sturgeon by means of a seine or a gill net the meshes of which are less than thirteen inches stretched measure while being fished, or to catch and take or attempt to catch and take any other foodfish with a seine the meshes of which shall be less than 2½ inches stretched measure while being fished, or any gill net the meshes of which shall be less than 5¼ quarter inches stretched measure while being fished, provided that gill nets with a mesh not smaller than 3 inches may be used from March 1-June 10 in each year, for the purpose of taking herring only. No person shall catch and take or attempt to catch and take any food fish, except Atlantic sturgeon, by means of a seine or gill net between June 10 in each and every year, and March 1 next ensuing. Suckers may be taken with a seine only from October 15th in each and every year to March 15 next ensuing.

5. No person shall catch and take or attempt to catch and take fish of any kind, with a pound net, or net of any character, which is anchored or staked or fastened down in any manner, permanently or otherwise, or use any net so anchored or fastened down in any manner, except for a parallel net set at the edge of low water, but no such net shall be set within 500 feet of a sluice, breach or intake emptying into the Delaware River or its tributaries.

6. Eelpots and fyke nets, each without wings, may only be used from July 1, to May 31, both dates inclusive, each year for the purpose of catching carp, catfish, eels, and suckers only provided, that the entrance of said eelpot and fyke net shall not be more than six inches in diameter and the outside diameter not more than 30 inches. All other species of fish which may be caught in said nets must be returned unharmed immediately to the waters from which taken.

7. Parallel nets whose meshes are not less than 3½ inches stretched measure, when being fished, may be used from September 1 to May 31, next ensuing in each year for the purpose of taking carp only. No such net shall be set in a manner that will impede navigation.

8. Seines with meshes not smaller than 2½ inches, and cast nets may be used from September 1 to May 31 for the purpose of taking catfish and carp only. All fish other than catfish and carp shall be returned unharmed to the water below low-water mark.

(d) In the tidal freshwater portions of the tributaries to the Delaware Bay and River between New Jersey and Delaware.

1. No person shall catch or take or attempt to catch or take fish of any kind by means of a net or use a net of any kind, except for fyke nets and nets commonly used for the purpose of taking of baitfish, from Saturday at 2:00 P.M. until Sunday at 12:00 midnight next ensuing in each week.

2. It shall be legal to take baitfish by means of a minnow seine not more than 100 feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than 1¼ inches in diameter or a scoop net with a single handle and with a diameter of not more than two feet.

3. No person shall catch and take or attempt to catch and take Atlantic sturgeon with any device excepting a seine or gill net, the meshes of which shall be not less than 13 inches stretched measure while being fished.

4. Shad may be taken with a drifting gill net, the meshes of which shall be not less than 5¼ inches stretched while being fished, from March 1 to June 15.

5. All foodfish may be taken with the following:

i. A drifting gill net, the meshes of which shall be not less than 2¾ inches stretched measure, while being fished, and not exceeding 200 feet in length, from April 1 to November 30.

ii. A hauling seine, the meshes of which shall be not less than 2¾ inches stretched measure while being fished, and not exceeding 70 fathoms in length at any time of year.

iii. Parallel nets, the mesh of which are not less than three inches stretched measure while being fished, and cast nets may be used for the capture of carp, suckers and catfish only from July 15 to May 31, but no net shall be set within 500 feet of another net or within 500 feet of a sluice, breach or intake emptying into the tributaries of the Delaware River and Bay.

iv. Eelpots or fyke nets, each without wings, provided the entrance to said eelpots and fyke nets shall not exceed six inches in diameter and the outside diameter not exceed 30 inches may be used at any time for the taking of eels only.]

[6.]**3.** Not more than one gill net or hauling seine shall be used from a boat.

7:25-6.13 Warmwater Fish

(a)-(l) (No change.)

(m) The daily creel and possession limit for walleye shall be five, except for Monksville Reservoir, Wanaque Reservoir and the Wanaque River between Greenwood Lake and Monksville Reservoir,

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where it shall be two with a closed season during the period of March 1, [1991] **1994** to April 30, [1991] **1994**.

(n)-(p) (No change.)

7:25-6.20 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	Daily Bag Limit
Trout	April [10] **9**- Sept. 30	No minimum	5

...

2.-6. (No change.)

7:25-6.21 (No change.)

7:25-6.22 Snapping turtles, bull frogs and green frogs

(a) Any person who has a fishing license or is entitled to fish without a license may in the waters of the State, take snapping turtles, bull frogs and green frogs by means of spears, hooks, dip nets not more than 24 inches in diameter, traps or by hand. Turtles shall not be taken with a gun or bow and arrow. The use of set lines is prohibited.

(b) The daily limit for snapping turtles shall be three and the daily limit for both bull frogs and green frogs shall be 15 in total.

(c) The open season for taking of snapping turtles, bull frogs and green frogs shall be from June 1 to October 31.

(d) Snapping turtles, bull frogs and green frogs may be taken in numbers greater than the daily limit, and beyond the dates of the open season, under special permit issued by the Division at its discretion.

1. Required permit information is as follows:

i. The applicant's name;

ii. The applicant's address and telephone number; and

iii. The time period for permit.

2. Applications shall be directed to:

New Jersey Division of Fish, Game, and Wildlife
Bureau of Freshwater Fisheries
CN 400
Trenton, New Jersey 08625-0400

3. The following information will be needed by the Division to grant the permit:

i. Why is the extension necessary;

ii. How long will the extension be needed; and

iii. Where will the trapping activity take place.

4. The permittee must agree to all reporting requirements in this subchapter.

(e) Those species of frogs and turtles listed as State Threatened or Endangered may not be pursued, taken, killed or possessed. The possession of other species of frogs and turtles is regulated under N.J.S.A. 23:2A-6.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Licensing and Degree Approval Standards

Proposed Readoption with Amendments: N.J.A.C. 9:1

Authorized By: Board of Higher Education,
Edward D. Goldberg, Chancellor and Secretary.

Authority: N.J.S.A. 18A:3-14e, m, and n.

Proposal Number: PRN 1993-391.

Submit comments by August 18, 1993 to:
Valerie Van Baaren, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 9:1, Licensing and Approval Standards, expires on February 21, 1994. The Board of Higher Education has proposed the readoption of these rules, with certain technical amendments, in order to continue to provide for regulation of institutions of higher education within the State of New Jersey pursuant to the Board's authority.

The chapter sets forth standards for the licensure of colleges and universities within the State including certain requirements which those institutions must meet to operate and award collegiate degrees. The particular requirements set forth in each subchapter are detailed below.

Subchapter 1 contains certain general requirements that all institutions of higher education must follow. These requirements include organization and administration, finances, educational programs, faculty, libraries, student services, physical facilities and official publications. The subchapter also governs unique course offerings such as courses offered to high school students for college credit.

Subchapter 2 sets forth requirements for licensure of institutions and procedures for the approval of academic degrees by the Board of Higher Education.

Suchapter 3 sets forth the standards which an institution of higher education must meet in order to utilize the title of "university."

Subchapter 4 sets forth particular requirements which must be fulfilled by an institution to offer graduate programs. Included in this subchapter are guidelines and requirements for authorization and review of such programs, master's degree requirements, doctoral degree requirements, faculty, budget, facilities and libraries.

Subchapter 5 contains the standards which a proprietary institution must meet in order to award collegiate degrees. The subchapter includes sections on authorized degrees, reassessment of licensure, library requirements, organizational structure, faculty teaching loads and academic freedom.

Subchapter 6 sets forth requirements for out-of-State institutions seeking approval from the Board of Higher Education to offer credit-bearing collegiate coursework within the State of New Jersey.

Subchapter 7 includes rules implementing N.J.S.A. 18A:3-15.1 et seq. concerning the use of fraudulent academic degrees within the State of New Jersey. This subchapter contains proposed technical amendments necessitated by the elimination of the Council on Postsecondary Accreditation References to this body, which reviews and recognizes accrediting agencies, has been deleted from N.J.A.C. 9:1-7.1(f), 7.2(c) and 7.4(a).

Social Impact

The Board of Higher Education is statutorily responsible for the licensure of institutions of higher education and the approval of academic degree programs offered by such institutions. The standards set forth in the rules proposed for readoption ensure that the quality of the programs located at New Jersey's public and private colleges and universities are of a high level and that the students attending these institutions are receiving appropriate academic instruction. Application of these standards protects the citizens of New Jersey and others who attend such institutions from paying money through tuition to institutions which are not providing such an education. Further, receipt of a degree from such institutions serves as evidence to the citizens of New Jersey that the graduate has completed certain basic requirements for the degree which the graduate holds or the field in which the graduate practices his or her profession.

Economic Impact

The rules proposed for readoption do not have a direct economic impact upon the State's institutions of higher education. They do, however, impact upon the institutions in the following sense. In order for institutions to meet the requirements set forth in this chapter, often institutions must dedicate both employees, materials, equipment and other resources to ensure compliance with the standards. The amount

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of monies necessary to meet the standards obviously varies from both institution to institution and within a particular institution depending upon the program or area involved.

Regulatory Flexibility Analysis

The rules proposed for readoption impact upon certain proprietary schools which are considered to be small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the rules only impact upon those proprietary schools which desire to offer collegiate degrees. Currently, only three such schools exist.

As stated above, the rules require such schools to meet certain program and institutional criteria in order to ensure the quality of the educational programs offered by those institutions. In order to meet these requirements, the schools must dedicate certain employees, materials, equipment and other resources. The rules do not contain burdensome reporting requirements.

These proprietary schools are held to the same standards as colleges offering similar programs. The standards cannot be lessened for small businesses of this nature without seriously diluting the quality of the programs offered by those institutions. Therefore, no differing standards based on business size are offered.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:1.

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

9:1-7.1 Definitions

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

. . .

"Seeking accreditation" means that the institution has achieved candidacy status or the equivalent standing as evidenced by meeting criteria as defined by the Commission on Higher Education of the Middle States Association of Colleges and Schools or the equivalent criteria as established by an appropriate accrediting body recognized by [the Council on Postsecondary Accreditation or] the United States Department of Education.

9:1-7.2 Protected degree designations

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

(c) The institution's requirements for awarding an academic degree shall be generally equivalent to those accepted in the United States by an accrediting body recognized by [the Council on Postsecondary Accreditation or] the U.S. Department of Education.

9:1-7.4 Out-of-State duly authorized institutions of higher education

In those states which do not have a licensing requirement for institutions of higher education, a duly authorized institution of higher education shall mean an institution which is regionally accredited or accredited by the appropriate accrediting body recognized by [the Council on Postsecondary Accreditation or] the United States Department of Education, or is seeking accreditation by the appropriate accrediting body recognized by [the Council on Postsecondary Accreditation or] the United States Department of Education.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services

Independent Mental Health Clinics Participating in the Personal Care Assistant Program Under Contract to the Department of Human Services, Division of Mental Health and Hospitals

Proposed Amendments: N.J.A.C. 10:66-1.5, 1.6 and 3

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

Authority: N.J.S.A. 30:4D-6b(3)(17); 30:4D-7, 7a, b, c; 30:4D-12; and 42 CFR 440.90 and 440.170(f).

Proposal Number: PRN 1993-382.

Submit written comments by August 18, 1993 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26
CN 712
Trenton, N.J. 08625-0712

The agency proposal follows:

Summary

A change in funding streams, implemented as a change in Medicaid reimbursement for personal care assistant (PCA) services provided by PCA providers under contract to the Department of Human Services, Division of Mental Health and Hospitals (DMH&H), is being proposed. The change in Medicaid reimbursement will realign the reimbursement for PCA services provided under contract to DMH&H with the Medicaid reimbursement for PCA services provided by home care agencies.

The change in reimbursement will enable DMH&H providers to continue to be reimbursed for the provision of PCA services at 93 percent of the rates paid to home care agencies, as has occurred since the onset of the PCA program in 1984. Home care agencies continue to receive higher reimbursement rates due to differences in training and responsibilities.

The change in Medicaid reimbursement for PCA services provided under contract to DMH&H will enable the Department of Human Services to draw down an enhanced Federal match, offsetting State dollars. Thus, this change will represent a change in the funding stream for these providers, but it is not anticipated there will be a change in total Medicaid and DMH&H funding for currently provided services.

The proposed amendments also eliminate the requirement for prior authorization of PCA services by DMH&H. DMH&H feels that prior authorization is no longer necessary to assure quality care. Instead, professional staff from DMH&H will conduct annual site visits to mental health facilities to review conformity to program requirements.

New text at N.J.A.C. 10:66-1.6(p)5vii clarifies the requirement for the frequency of entering progress notes in a Medicaid recipient's PCA record. This requirement will assist mental health providers in maintaining a Federally required audit trail for the provision of Medicaid-reimbursed PCA services.

Social Impact

No social impact on Medicaid recipients is expected because the proposed amendments contain no revisions in the Medicaid program's policies in the area of PCA services. PCA services will continue to be available to Medicaid recipients in the community.

The purpose of providing PCA services remains unchanged: to enable Medicaid recipients to receive care at home from trained staff under the supervision of a nurse, as an alternative to long term, institutional care.

There is no known social impact on providers. The proposed amendments affect only PCA providers under contract to DMH&H. The main impact of the proposed amendments is a change in the funding stream as indicated above.

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Economic Impact

There is no anticipated economic impact on Medicaid recipients as a result of the proposed amendments to change Medicaid reimbursement for PCA services and eliminate the prior authorization requirement. There is no cost to Medicaid recipients for PCA services.

It is anticipated that an additional estimated $153,000 in SFY 1993 and $168,000 in SFY 1994 in Federal Title XIX monies will supplant existing State dollars, thereby enhancing the Department of Human Services' revenues.

The Division of Mental Health and Hospitals is fiscally responsible for the State share of the increase in the reimbursement rates for PCA services for SFY 1993 and SFY 1994; SFY 1995 monies will be appropriated to the Division of Medical Assistance and Health Services.

Regulatory Flexibility Analysis

The proposed amendments require a regulatory flexibility analysis because providers of PCA services may be considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the New Jersey Regulatory Flexibility Act, because some providers may employ fewer than 100 full-time employees.

The effect of the elimination of the prior authorization requirement will be positive for both DMH&H and participating mental health providers. The elimination of the prior authorization requirement applies equally to all providers and will greatly reduce the current paperwork burden.

However, there is a new Medicaid regulatory requirement for entering progress notes in a Medicaid recipient's PCA record. Providers should already be meeting this requirement because it is a requirement of DMH&H. There will be no additional cost to providers and the requirement is applied equally to all providers regardless of size, in compliance with State law (see N.J.S.A. 30:4D-12).

Providers of PCA services should already have sufficient professional staff, including physicians and nurses, to comply with the additional requirement for entering progress notes in a Medicaid recipient's PCA record. Federal regulations governing PCA services (42 CFR 440.170(f)) require that these services be prescribed by a physician and supervised by a registered nurse.

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

10:66-1.5 Prior authorization

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

(c) Prior authorization for services rendered by independent clinics is required as follows:

1.-5. (No change.)

[6. Personal care assistant services: The maximum period for authorization is six months. For services beyond six months, reauthorization will be required.]

10:66-1.6 Scope of service

(a)-(o) (No change.)

(p) Other service rules are as follows.

1.-4. (No change.)

5. Personal care assistant services are health related tasks performed by a qualified individual in a recipient's home under the supervision of a registered professional nurse, as certified by a physician in accordance with a written plan of care [and prior authorized by the Division of Mental Health and Hospitals. Prior authorization will be based on strict measures of functional impairment and disability].

i. (No change.)

ii. Personal care [assistance] **assistant** services provided by a family member are not covered services.

iii. Personal care assistant services shall be [authorized] **provided** only in instances where a family support system or other informal care giver is unavailable, inaccessible or inappropriate.

iv.-v. (No change.)

[vi. An initial visit to evaluate the need for personal care assistant service does not require prior authorization. Following the initial visit, prior authorization is required for all services provided to the Medicaid eligible person not covered under Medicare. This includes a nursing reassessment visit which may be provided at least once every six months, or more frequently if the recipient's condition warrants, to reevaluate the recipient's need for continued care. (See N.J.A.C. 10:66-3.3(n).)]

vi. An initial nursing assessment visit must be made to evaluate the need for personal care assistant service. Following the initial visit, a nursing reassessment visit may be provided at least once every six months, or more frequently if the recipient's condition warrants, to reevaluate the recipient's need for continued care. (See N.J.A.C. 10:66-3.3(n).)

vii. The personal care assistant shall enter progress notes on a weekly basis in the recipient's record, including the recipient's progress toward goals. These progress notes shall be signed and dated by the personal care assistant.

10:66-3 HCFA Common Procedure Coding System (HCPCS)

HCPCS CODE	DESCRIPTION	MAXIMUM FEE ALLOWANCE
Z1600 ZI	Individual Reimbursement Rate, P/Hour	[10.23]**13.02**
Z1605 ZI	Group Reimbursement Rate, P/Hour	[7.44]**10.23**
Z1610 ZI	Initial Nursing Assessment Visit, P/Visit	35.00
Z1611 ZI	Individual Reimbursement Rate, P/Half Hour	[5.12]**6.51**
Z1612 ZI	Group Reimbursement Rate, P/Half Hour	[3.72]**5.12**
Z1613 ZI	Nursing Reassessment Visit, P/Visit	35.00

LABOR

(a)

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Occupational Safety and Health Review Commission Rules of Procedure

Proposed Readoption: N.J.A.C. 12:112

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

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-32 and 34:6A-42(c).

Proposal Number: PRN 1993-398.

Submit written comments by August 18, 1993 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:112, Occupational Safety and Health Review Commission Rules of Procedure, is scheduled to expire on September 6, 1993. The rules provide detailed guidance for the efficient and fair performance of the Review Commission and also provide each public employer with an explanation of the employer's rights and obligations when appearing before the Review Commission, thereby enabling the employer to prepare documents in an appropriate manner for presentation to the Commission. The Department of Labor, in conjunction with the Review Commission, has reviewed these rules and determined them to be necessary, adequate, reasonable, efficient, understandable and proper for the purpose for which they were originally promulgated.

The New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., requires the Department to establish health and safety standards in order to provide public employees with

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a safe and healthful work environment that is free from recognized hazards. If the Commissioner of the Department of Labor determines that a public employer has violated a provision of the Act, or a safety or health standard promulgated under this Act, the Commissioner must, with reasonable promptness, issue to the employer a written order to comply. The order must describe both the nature of the violation, including a reference to the provision of the Act, standard, regulation or order alleged to have been violated and the sanction being imposed, and must also fix a reasonable time for compliance.

The Act establishes, pursuant to N.J.S.A. 34:6A-42(a), an Occupational Safety and Health Review Commission (Review Commission) within the Department of Labor to hear appeals from citations, notifications and penalties issued under the Act. Pursuant to N.J.S.A. 34:6A-42(c), the Review Commission is required to adopt rules concerning the procedural aspects of its hearings. The rules of the Review Commission were first adopted effective September 6, 1988 and are set forth at N.J.A.C. 12:112.

N.J.A.C. 12:112-1 contains general provisions including purpose, scope and definitions sections. Also included in this subchapter are sections setting forth quorum requirements, voting procedures, method for computing time under the rules, the procedure for requesting extensions of time, notice and service of process requirements, filing rules and the rules governing the consolidation and severance of proceedings.

N.J.A.C. 12:112-2 sets forth procedures for party and non-party participation in proceedings before the Review Commission.

N.J.A.C. 12:112-3 describes the requirements and procedures for notices, complaints, answers and motions.

N.J.A.C. 12:112-4 establishes requirements and procedures for prehearing conferences.

N.J.A.C. 12:112-5 sets forth hearing requirements and the procedures for the conduct of hearings, including examination of witnesses and filing of briefs, among others.

N.J.A.C. 12:112-6 describes post-hearing procedures governing the Review Commission's decision, party exceptions and motions for stay of the Commissioner's final order.

The last subchapter, N.J.A.C. 12:112-7, addresses miscellaneous issues such as settlement, withdrawal, expedited proceedings, standards of conduct and ex parte communications.

The chapter is not being amended on readoption. The Department and the Review Commission believe the current text of the chapter is sufficient for the purposes of implementing the hearing requirements under the Public Employee Occupational Safety and Health Act.

Social Impact

The rules proposed for readoption only affect public employers; private employers are covered under the Federal Occupational Safety and Health Act.

These rules will benefit public employers by providing them with procedures by which they can appeal any citations, notifications and penalties issued by the Commissioner. The rules also define the right of interested persons or their representatives to participate in proceedings before the Review Commission. Most importantly, the rules safeguard the health and safety of public employees by providing a mechanism for the expeditious review of the Commissioner's orders, thereby insuring prompt correction of violations which have been determined to harm public employees.

Economic Impact

Because the rules apply only to public employers, they will not have an economic impact upon employers in the private sector in New Jersey.

Public employers who choose to appeal any written order to comply issued by the Commissioner will bear the costs associated with such an appeal. However, the rules proposed for readoption provide a streamlined administrative process designed to secure the expeditious resolution of appeals at the lowest possible cost.

The Department of Labor will bear the full costs of administration, including compensation of the Review Commission members and the staff needed to support the Commission in carrying out its responsibilities under the Act. These costs have proven to be minimal.

Regulatory Flexibility Analysis

Only public employers in the State of New Jersey will be affected by the proposed readoption of N.J.A.C. 12:112. Although the definition of the term "employer" found at N.J.A.C. 12:112-1.4 is technically broad enough to encompass private employers acting under contract with the State, private employers acting on behalf of government entities are in fact excluded from the rules' scope; private employers are subject to the occupational health and safety standards promulgated by Federal OSHA. However, because the language in the definition is derived directly from the statute, N.J.S.A. 34:6A-27, the definition contained in the regulation may not be modified.

The interpretation provided herein is designed to clarify the actual scope of the rule. In light of this interpretation, the reporting, recordkeeping and compliance requirements associated with the rule would not be imposed on any small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., acting on behalf of a government entity. Accordingly, a regulatory flexibility analysis is not required.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:112.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MARRIAGE COUNSELOR EXAMINERS

Board of Marriage Counselor Examiners Rules

Proposed Readoption with Amendments: N.J.A.C. 13:34

Authorized By: State Board of Marriage Counselor Examiners, Leslie Aronson, Executive Director.

Authority: N.J.S.A. 45:8B-13.

Proposal Number: PRN 1993-392.

Submit written comments by August 18, 1993, to:
Leslie Aronson, Executive Director
State Board of Marriage Counselor Examiners
Post Office Box 45007
Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the rules of the Board of Marriage Counselor Examiners (the "Board") found at N.J.A.C. 13:34 will expire on October 26, 1993. The rules in this chapter were initially promulgated in order to implement the provisions of the Practicing Marriage Counseling Act, P.L. 1968, c.401 (N.J.S.A. 45:8B-1 et seq., the "Act").

The Act requires the Board to regulate the practice of marriage counseling in order to protect the public from unauthorized practice and from unprofessional conduct by persons licensed to practice marriage counseling (see N.J.S.A. 45:8B-1). The rules proposed for readoption establish standards of professional conduct, educational and experiential requirements for licensure, and supervision standards for temporary permit holders. These rules have had an advantageous impact on the regulation and conduct of the profession by enabling the Board to have in place procedures which serve and protect the public's best interests.

In compliance with the Executive Order, the Board has reviewed these rules and has determined, for the reasons set forth more specifically below, that some amendments are necessary at this time. Additional issues arose during the review process which will require further study by the Board, and these matters will be addressed in a separate proposal to be published in the near future. As amended, the rules continue to be necessary, reasonable and proper for the purposes for which they were originally intended.

Following is a brief summary of each of the four subchapters of N.J.A.C. 13:34 including a description of proposed amendments and the rationale therefor.

Subchapter 1, General Provisions, includes the Board's fee schedule, examination review procedures, information concerning where application forms and licensee lists may be obtained, and a statement that all hearings must conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. An amendment is proposed to correct the citation to the Administrative Procedure Act. This subchapter also contains a provision requiring every licensee to display in his or her office a notice stating that he or she is a licensee of this Board and setting forth the address of the Board and the Division of Consumer Affairs (the "Division").

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Subchapter 2 defines professional misconduct. In order to address licensee inquiries and Board concerns, a new paragraph 6 has been added to N.J.A.C. 13:34-2.1(a) establishing procedures for client record transfer in the event a licensee ceases to engage in practice or will remain out of practice for more than three months. Further amendments require record retention for seven rather than six years, consistent with record retention requirements of other professional boards within the Division. Additional amendments clarify existing regulations and update terminology.

N.J.A.C. 13:34-3.1 states that employees of institutions, agencies or facilities exempt from licensure pursuant to N.J.S.A. 45:8B-6(a)(1) through (3) may not engage in unsupervised, independent practice. N.J.A.C. 13:34-3.2 establishes guidelines for determining whether a not-for-profit organization may qualify for exemption as a bona fide community organization.

Significant changes are proposed to N.J.A.C. 13:34-3.3 and 3.4 which establish supervision standards for individuals preparing for the practice of marriage counseling and for employees of proprietary organizations while performing those duties for which they were employed. Based upon the evolving complexity and dynamics of family therapy, the Board has determined that it is necessary and in the best interests of the public to increase the required hours per week of both client contact and individual face-to-face supervision. These proposed amendments, which are consistent with supervision standards promulgated by the Board of Psychological Examiners, are intended to enable the candidate to gain additional clinical experience and to allow for more effective monitoring of services. The proposed amendments are as follows:

(a) Client contact: increased from 17 to 20 hours per week.

(b) Overall supervision: increased from three to four hours per week (based upon the existing ratio of one hour of supervision for five hours of client contact.)

(c) Portion of overall supervision which must be individual face-to-face supervision: increased from one hour (out of the previously required three hours of overall supervision) per week to two hours out of four.

Because supervisors will be required to devote additional time to individual supervision, amendments are also proposed to permit supervision of no more than three, as opposed to five, candidates at any one time. This will ensure that supervisors will be able to continue to provide effective and responsible supervision and comply with minimum Board standards.

Subchapter 4, Qualification for Admission to Examination, sets forth experiential and educational requirements for licensure. Amendments to N.J.A.C. 13:34-4.1 are consistent with amendments to subchapter 3 as outlined above. In N.J.A.C. 13:34-4.2, the word "regionally" has been added preceding the words "accredited educational institutions" for clarification. For informational purposes, a new N.J.A.C. 13:34-4.2(b) has been added which mirrors the statutory provision concerning recognized educational institutions (see N.J.S.A. 45:8B-3).

Social Impact

The rules proposed for readoption establish standards of professional conduct as well as educational and experiential requirements for licensure. These professional standards have enabled the Board to ensure that marriage counseling clients are protected from unprofessional, unauthorized and unqualified practice. It is therefore anticipated that readoption of the existing rules will have an advantageous social impact upon clients, licensees and the Board's own regulatory process in that these high standards will be maintained.

Proposed new requirements in subchapter 2 regarding client record transfer in the event of practice cessation should facilitate continuity of services and client access to records.

Proposed amendments to subchapter 3 will require individuals under supervision to engage in an additional three hours of clinical practice per week and will require supervisors to provide one additional hour of individual supervision per week. The Board anticipates that this increased client contact during the internship period and the concomitant higher level of individual supervision will serve to enhance professional competence to the ultimate benefit of the client.

Economic Impact

The proposed readoption of the fee schedule will obviously have an economic impact upon both licensees and permit holders. However, since the fee schedule is proposed for readoption without change, the readoption does not increase that economic burden. It should be noted that pursuant to N.J.S.A. 45:1-3.2, all professional licensing and occupational boards are required to be self-funding; that is, operating costs must be met through licensing and other fees. Since funding of the Board's operation is partially attained by the fee structure now in place, failure to readopt it would place the Board's operation in jeopardy.

The proposed client record transfer provisions will have an economic impact on retiring or inactive licensees in that they will have to place three notices in a daily newspaper regarding closure of the practice. The Board believes that this expense will be nominal and in any event will outweigh the advantage of providing the client or subsequent treating professional with a historical mental health and treatment record.

The proposed changes in the manner in which supervision may be rendered are not likely to create an economic impact upon the supervisor, the supervisee or agencies providing marriage counseling services. Although the number of candidates a supervisor may supervise at any one time will be limited, those candidates will have a greater need for individual supervision. Thus, in a private practice setting, any potential loss of income based upon such limitation will be offset by the greater demand for individual supervision. The Board does not believe that proprietary agencies offering marriage counseling services will be economically impacted since the proposed increased supervision requirements are not unduly burdensome and should be easily accomplished within most agencies' existing staffing structures.

No economic impact upon the public is anticipated as a result of the proposed readoption of N.J.A.C. 13:34, as amended, other than a nominal fee for a copy of the client record if requested.

Regulatory Flexibility Analysis

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

The rules proposed for readoption will apply to all licensees and permit holders. The Board of Marriage Counselor Examiners currently licenses 1,107 individuals and has issued 11 temporary permits. Compliance requirements for permit holders include completion of a supervised clinical internship and adherence to supervision standards set forth in the rules. Compliance requirements for licensees include payment of licensing fees in a timely manner and adherence to professional practice standards.

Specifically, licensees are required to post notice of practice authorization in a conspicuous place, respond to Board requests within 30 days, maintain accurate client records, retain such records for seven years, and provide for their transfer if necessary. Licensees must also provide to the client or another licensed health care practitioner, upon request, all client reports and records and must advise the Board within 30 days of any name or address change. No professional services are likely to be needed in order to comply with these requirements.

Anticipated compliance costs are as stated in the Economic Impact statement. Many of the requirements in the rules proposed for readoption are statutory and are already a part of a professional's regular practice. The Board considers these requirements to be the minimum necessary to comply with the statute and to protect the health, safety and welfare of the consumer. Accordingly, no exemption from the rules based upon business size is feasible.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:34.

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

13:34-1.7 Hearings to conform to law

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. [54:14B-1] **52:14B-1** et seq., as amended and supplemented.

13:34-2.1 Misconduct defined

(a) Professional or occupational misconduct in the practice of marriage counseling by persons licensed by the State Board of Marriage Counselor Examiners shall include, but not be limited to, the following:

1.-5. (No change.)

6. Failing to maintain a record for each client which accurately reflects the client contact with the practitioner.

i. Unless otherwise provided by law, all client records must be retained for at least [six] **seven** years.

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ii. If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the licensee or designee shall:

(1) Establish a procedure by which clients can obtain their records or acquiesce in the transfer of those records to another licensee or health care professional who is assuming the responsibilities of that practice;

(2) Publish a notice of the practice cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation; and

(3) Make reasonable efforts to directly notify any client treated during the six months preceding the cessation, providing information concerning the established procedure for record retrieval.

7. (No change.)

8. Failing to make available to a client, or, upon a client's request, to another licensed health practitioner consistent with that practitioner's authorized scope of practice, copies of reports or test records relating to the client which are in the possession or under the control of the licensee, or failing to complete forms or reports required for the reimbursement of a client by a third party.

i. (No change.)

ii. A practitioner may, however, withhold information from a client if[,] he or she believes release of such information would adversely affect the client's **mental or psychological** health[, and this].

iii. This section shall not require release to the parent or guardian of a minor of records or information relating to [venereal] **sexually transmitted** disease or abortion except with the minor's consent.

9.-18. (No change.)

13:34-3.2 Bonafide community agency defined

(a) For the purpose of N.J.S.A. 45:8B-6(a)(2), legal incorporation as a not-for-profit organization shall not in itself be satisfactory evidence of a de facto clinic or bona fide community agency.

1. Such corporations shall give other evidence of their status as a bona fide community agency, such as [profit] **proof** that the organization is supported wholly or in major part by public funds[.], before being permitted to advertise performance of marriage and family counseling services.

2. (No change.)

13:34-3.4 Supervised experience

(a) (No change.)

(b) The processing of a candidate's application is dependent upon successful completion and documentation of a minimum of five years of supervised experience, two years of which shall have been in marriage counseling, one year of which shall be after receipt of a qualifying degree. As prescribed in N.J.S.A. 45:8B-18(b), "supervised experience" shall mean marriage and family counseling or therapy that meets the following criteria:

1. The equivalent of one year of full-time experience is set at a minimum of 1,750 hours, equal to but no more than 35 hours per week on a 50-week per year basis. The 35 hours per week shall include:

i. Twenty hours of face-to-face client contact per week;

ii. Four hours of supervision, at least two hours of which must be individual face-to-face supervision. The remaining two hours may be individual or group supervision. The ratio shall be one hour of supervision for each five hours of client contact; and

iii. Eleven hours in other work-related activities such as recordkeeping, consultations, report writing, etc.

[1.]**2.** Unsupervised independent practice by the candidate is prohibited. The candidate's clients shall include only those who have been approved in advance by the supervisor(s).

[2. The professional work of the candidate shall be reviewed by the supervisor(s) for a minimum of one hour for each five hours of client contact, to include at least one hour of face-to-face individual supervision per week.]

[i.]**3.** No more than [five] **three** candidates shall be under concurrent supervision by any supervisor.

[ii.]**4.** (No change in text.)

[3.]**5.** (No change in text.)

[4. The equivalent of one year of full-time practice is set at a minimum of 1,750 hours, equal to but no more than 35 hours per week on a 50-week per year basis (a minimum of 17 hours of client contact per week).]

[5.]**6.** Supervised experience not completed prior to the filing of an application for licensure, unless conducted in a facility expressly permitted by law (N.J.S.A. 45:8B-6), will require the issuance of a temporary permit (N.J.S.A. 45:8B-6(e)), obtainable by the following procedures:

i. [Filling] **Filing** the application with all supporting materials;

ii.-iii. (No change.)

Recodify existing 6 through 8 as **7 through 9**. (No change in text.)

13:34-4.1 Experiential requirements

(a) Pursuant to N.J.S.A. 45:8B-18(b), the processing of a candidate's application is dependent upon successful completion and documentation of a minimum of five years of supervised counseling experience, two years of which shall be in marriage counseling.

1. "Supervised experience" for a period of one year is defined as:

i. A minimum of [17] **20** hours per week of actual marriage and family counseling client contact, with a minimum of one hour of [individual] supervision for every five hours of client contact; and

ii. A minimum of [850] **1,000** hours of counseling with couples and families and a minimum of [170] **200** hours of [individual] supervision is required.

2. (No change.)

13:34-4.2 Educational requirements

(a) Pursuant to N.J.S.A. 45:8B-18(a), any person applying to the Board after January 1, 1970 with a doctorate degree in a closely allied field of study or a doctor of medicine, shall establish through official transcripts from **regionally** accredited educational institutions that a course of study including the following components has been completed. In addition, a post-masters degree pursuant to N.J.S.A. 45:8B-18(a) in marriage and family counseling is defined as a degree which requires as a prerequisite a masters degree in a mental health related field and which includes the following components:

1.-6. (No change.)

(b) The Board shall not base its determination as to whether it will recognize an educational institution's program solely on the failure of any professional organization of marriage counselors to accredit the program.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
Board of Psychological Examiners Rules
Proposed Repeal and New Rules: N.J.A.C. 13:42

Authorized By: State Board of Psychological Examiners, Leslie Aronson, Executive Director.

Authority: N.J.S.A. 45:14B-13.

Proposal Number: PRN 1993-395.

Submit written comments by August 18, 1993 to:
Leslie Aronson, Executive Director
State Board of Psychological Examiners
Post Office Box 45017
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Psychological Examiners is proposing to repeal the current text of N.J.A.C. 13:42 and to replace it with new rules. Most but not all of the substantive provisions are drawn from the existing rules; however, all have been rewritten and reorganized for better clarity and to simplify locating rules addressing specific topics. Proposed new regula-

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tions address specific inquiries or problems coming to the attention of the Board in recent years as well as contemporary professional practice issues.

Following is a summary of each of the 11 subchapters now included in Chapter 42. The summary includes a detailed discussion of all provisions which were not previously a part of this Chapter.

N.J.A.C. 13:42-1.1 sets forth the scope of practice of a licensed psychologist. Biofeedback and neuropsychology, contemporary applications of traditional techniques of psychophysiological psychology (an area already within the discipline) are newly identified as within the scope of practice in response to questions from licensees.

N.J.A.C. 13:42-1.2, which enumerates those persons requiring licensure, specifically identifies practitioners of psychoanalysis as individuals requiring licensure under the Act, consistent with the Board's long held position that psychoanalysis is a technique of psychotherapy which requires advanced training and specialization. The question of whether psychoanalysis is a sub-specialty of psychology, and therefore may be practiced only by licensees of this Board and statutorily exempt individuals, or whether it is an independent discipline has been at times questioned by some practitioners and was the subject of a case brought against the Board in the United States District Court for the District of New Jersey. See, *New Jersey Institute for Training in Psychoanalysis v. New Jersey State Board of Psychological Examiners,* No. 85 Civ. 5254 (D.N.J. July 14, 1986), aff'd 819 F.2d 1134 (1987). In that case, the plaintiff maintained that it was exempt from licensure under those provisions of the Act which exempt qualified members of other professional groups doing work of a psychological nature. Judge Debevoise, recognizing the duty of the State to establish standards for licensing practitioners in order to protect the public health, safety and welfare, found that this "ongoing, unsettled debate" must be determined under state law. (District Court, *id.* at 16.) Accordingly, this provision is intended to formalize the Board's determination that, for the protection of the public health, safety and welfare, psychoanalysis may be practiced only by individuals licensed by this Board or those statutorily exempt. It is the Board's position that practitioners of psychoanalysis must of necessity have a broad-based grounding in all areas of psychological teaching and approaches, not merely in psychoanalysis, in order to properly understand the client and to comprehend the consequences of the application of the technique.

N.J.A.C. 13:42-1.3 redefines exempt non-profit bona fide community organizations to include certain hitherto ineligible settings of community service providers, such as hospital mental health clinics, clinics sponsored by religious organizations, and mental health groups contracting with the State Departments of Health and Human Services. This will enlarge the opportunities for well-trained individuals to provide care under supervision to larger populations of needy persons.

N.J.A.C. 13:42-1.4 through 1.5 define exemptions from licensure.

Subchapter 2 sets forth initial qualifications to sit for the examination. Qualifying criteria for admission to the examination based upon equivalent training have been clarified and spelled out in detail.

Subchapter 3 outlines requirements for one-year and three-year temporary permits. Increasing numbers of candidates and licensees have made necessary a more orderly tracking system of permits and licenses, which is proposed to be accomplished through the issuance of numbered temporary permits to all permit holders. Applicants for holders of one-year permits—which allow unsupervised practice pending completion of the examination process—will be required to document recent experience; that is, that one of the required five years of practice subsequent to receipt of the doctoral degree was within seven years immediately preceding application. A new category of one-year temporary permit for supervised practice has been established to enable individuals who have not engaged in active practice for five years to practice, with oversight, while completing the examination process.

Subchapter 4 establishes supervision standards for individuals seeking to gain the two years of supervised experienced required for licensure. Permissible supervisors and the responsibilities of both the supervisor and the supervisee are detailed.

Examination procedures are detailed in subchapter 5. A new section has been added to identify conduct which subverts or attempts to subvert the licensing examination process.

Subchapter 6 sets forth the Board's fee schedule and is proposed without change from the existing fee schedule.

The rules in subchapter 7, which address acceptable professional practice forms, are intended to ensure that professional integrity and consistent professional practice standards are maintained when licensees engage in the various practice structures now permitted by law. New sections on employment of biofeedback technicians and neuropsychometric technicians have been included to assure that licensees provide appropriate direction and exercise adequate oversight when delegating duties to these individuals.

Minimum standards for preparation of client records are codified in subchapter 8, with procedures for how and when access to records shall be available to patients or their representatives and to insurance carriers to the extent permitted by various laws. Rules intended to protect client confidentiality as well as the integrity of computer-generated client records are included in this subchapter.

Subchapter 9, Advertising, restates existing advertising guidelines with the exception of the prohibitions against testimonial advertising and claims of professional superiority. New provisions would permit the use of testimonials provided they are based upon personal knowledge or experience obtained from a provider relationship or direct personal knowledge of the subject matter. Both lay and expert testimonials are contemplated, with the responsibility of the advertiser to be able to substantiate any objective, verifiable statements of fact. Similarly, claims of professional superiority will be permitted where the licensee is able to substantiate any such claim. By these provisions, the Board seeks to allow new forms of advertising and to provide licensees with appropriate standards to make information concerning their services available to the public while at the same time assuring the clear flow of information to the public and preventing deceptive and misleading practices.

Subchapter 10, General Obligations of a Licensee, restates and clarifies rules codified within existing subchapters 1, General Provisions, and 4, Misconduct, with the following proposed amendments and/or additions. Proposed N.J.A.C. 13:42-10.1 requires the posting of a notice advising that information on professional fees is available upon request. Proposed new N.J.A.C. 13:42-10.3 embodies current legislative interest in prohibiting self-referrals by prohibiting a licensee from referring a client to a health care service in which the licensee has any financial or significant beneficial interest. Proposed new N.J.A.C. 13:42-10.7 makes it mandatory for a licensee to report suspected serious ethical or impairment problems by another licensee. Additional proposed new regulations included in this subchapter establish criteria for determining excessive fees and minimum billing content.

Subchapter 11 is a restatement and clarification of existing regulations establishing procedures by which clients may authorize licensees to disclose confidential information upon the request of an insurer or other third-party payor. No substantive amendments have been made to these provisions.

Social Impact

The proposed new rules recodify and clarify existing regulations, provide codifications of accepted standards of practice and update precepts long embodied in the current rules. In so doing, the rules address many questions submitted to the Board by licensees, candidates for licensure, attorneys, clients, insurance carriers and the public concerning existing rules and standards of practice as well as contemporary practice issues. Licensees will benefit from the proposed new rules in that they will have a clear and comprehensive set of regulations to guide them in their professional practice.

Candidates for licensure will also benefit from the clear and concise regulations governing the manner in which they may qualify for licensure. The redefinition of bona fide community organization will exempt from the requirements of the Act certain community service providers previously deemed ineligible for exemption, which in turn will enlarge the opportunities for licensure candidates to provide care under supervision to larger populations of needy persons.

The overall impact of the proposal on the public is expected to be advantageous because the rules enhance consumer information and protection in areas such as billing, patient records, confidentiality and advertising. Clarifications to the scope of practice provisions will also benefit the public. Procedures are established for ample licensee oversight when ancillary non-licensed staff assist in biofeedback techniques and the administration of neuropsychological tests, now clarified to be within the licensee's scope of practice. Clarification that psychoanalysis is within the psychologist's scope of practice will also aid the public in identifying the minimum educational and experiential qualifications required of non-exempt individuals who practice psychoanalysis and will ensure that services provided by these individuals are rendered subject to Board oversight and high standards of professional practice. Finally, the prohibition on self-referrals will provide greater assurance to the

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public that referrals are made on the basis of the need for services and not by the inducement of financial gain by the referring licensee.

Economic Impact

The proposed rules may inhibit practitioners wishing to invest in forms of business entities which dilute or ignore professional quality control issues, in contrast to the traditional solo practice, partnership or professional association. Licensees who presently refer clients to a health care service in which the licensee has any financial interest will lose the profit now generated by such referrals. However, the Board believes that any costs to the licensee will be significantly outweighed by the necessary consumer protection measures established by both of these requirements. Not only will the quality of care and the integrity of the profession be maintained but the probable increase in health care costs resulting from overutilization where a financial interest is involved will be avoided.

The proposed rules also forbid licensees to charge excessive fees. Licensees who sign insurance claim forms as supervising practitioners for unlicensed therapists will be required to invest the professional effort to perform responsible supervision. Mental health entities wishing to qualify as exempt settings for psychological services will have to be supervised by a licensed psychologist and can then employ candidates for licensure as part of the training process. An unknown number of individuals now purporting to practice psychoanalysis who are not licensed by this Board or who do not qualify for exemption may no longer engage in practice. Practitioners who desire to include biofeedback technicians and neuropsychometric technician in their service offerings will now be permitted to do so, under appropriate supervision. As stated, the Board believes that any monetary costs imposed on practitioners by these requirements will be negligible in comparison with the better professional services to be rendered in compliance with the new rules.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., requires the Board to give a description of the types and estimates of the number of small businesses to which the proposed rules will apply. Currently licensed psychologists total approximately 2,500 and individuals under one- or three-year permits currently number approximately 200. Most licensees would be classified as conducting "small businesses" as that term is used in the statute, and the following analysis applies to these individuals.

Permit holders must complete all requirements for licensure prior to expiration of the permit and may assume only the number and kind of cases that can be readily transferred to a licensed psychologist in the event requirements are not completed. Permit holders must practice under supervision. Licensees rendering supervision must comply with minimum supervision standards identified in the rules; document the supervised experience every six months and at the completion of the supervision on forms provided by the Board; and obtain a written disclosure form from the client regarding the supervisee's services.

The rules impose new requirements on Board licensees to establish policies and procedures to provide ethical, honest, competent and lawful services by themselves and employees and by persons practicing under supervision of the licensees. The licensee may employ administrative staff to carry out some portions of these requirements, but the licensee will still carry ultimate responsibility for the practices to the extent specified in the rule. A licensee employed in a practice setting who discovers that the premises do not have and will not establish professional quality control mechanisms is required to terminate that employment and to notify the Board.

Licensees must comply with minimum requirements for contents of bills, client records and advertisements and must maintain client records for at least seven years from the date of last entry and advertising for at least three years from date of dissemination. Requirements for use of personal or other computers to prepare client records include use of a program specifically designed to protect the integrity of the record. Record requests must be provided no later than 30 days from a licensee's receipt of a request from a client or duly authorized representative, and address changes must be reported to the Board within 30 days of the change. Notice of practice authorization must be posted in each place of doing business together with a notice stating that information on fees is available on request. All licensees must adhere to minimum professional practice standards as outlined in the rules with regard to general conduct of the practice and testing and research situations. Licensees must report to the Board any knowledge of another licensee's serious impairment, incompetence or unprofessional conduct. Upon the request of an insurer or other third-party payor, licensees are required to obtain authorization from the client to release records within 14 days of receiving the request. Within 10 days of receipt of the authorization, the licensee must provide certain limited client information to the insurance carrier. In the event the carrier requests additional review, the licensee must notify the Board and submit additional information to a Board-designated independent professional review committee.

Costs of compliance with these rules do not differ materially from costs already incurred by licensees within their existing practice structures and under the existing rules, except as outlined in the Economic Impact statement. Because the requirements outlined above are considered to be the minimum necessary for the protection of the public health, safety and welfare, the rules must be uniformly applied. No exemption based upon business size is feasible since to do so would frustrate the intent of the rules.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:42.

Full text of the proposed new rules follows:

CHAPTER 42
BOARD OF PSYCHOLOGICAL EXAMINERS

SUBCHAPTER 1. SCOPE OF PRACTICE; PERSONS REQUIRING LICENSURE; EXEMPTIONS FROM LICENSURE; UNLICENSED PRACTICE

13:42-1.1 Scope of practice

(a) The scope of practice of a licensed psychologist includes, but is not limited to, the use or advertisement of the use of theories, principles, procedures, techniques or devices of psychology, whether or not for a fee or other recompense. Psychological services include, but are not limited to:

1. Psychological assessment of a person or group including, but not limited to: administration or interpretation of psychological tests and devices for the purpose of educational placement, job placement, job suitability, personality evaluation, intelligence, psychodiagnosis, treatment planning and disposition; career and vocational planning and development; personal development; management development; institutional placements; and assessments in connection with legal proceedings and the actions of governmental agencies including, but not limited to, cases involving education, divorce, child custody, disability issues and criminal matters;

2. Psychological intervention or consultation in the form of verbal, behavioral or written interaction to promote optimal development or growth or to ameliorate personality disturbances or maladjustments of an individual or group. Psychological intervention includes, but is not limited to, individual, couples, group and family psychotherapy, and psychological consultation includes consultation to or for private individuals, groups and organizations and to or for governmental agencies, police and any level of the judicial system;

3. Use of psychological principles, which are operating assumptions derived from the theories of psychology that include, but are not limited to: personality, motivation, learning and behavior systems, psychoanalysis, psychophysiological psychology including biofeedback, neuropsychology, cognitive psychology and psychological measurement; and

4. Use of psychological procedures, which are applications employing the principles of psychology and associated techniques, instruments and devices. These procedures include, but are not limited to, psychological interviews, counseling, psychotherapy, psychoanalysis, hypnotherapy, biofeedback, and psychological assessments.

13:42-1.2 Persons requiring licensure

(a) Persons requiring licensure include all those whose conduct is within the scope of practice set forth in N.J.A.C. 13:42-1.1, and whose practice is not otherwise exempt pursuant to N.J.S.A. 45:14B-6, N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-1.3 through 1.5, including the following:

1. Persons offering services to the public in private practice, in partnership with other licensed health care professionals, in

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professional service corporations as shareholders or employees, and in or affiliated with all forms of managed health care organizations (for example, HMO, PPO, IPA, etc.);

2. Employees of general business corporations to the extent such practice is permitted pursuant to N.J.A.C. 13:42-7.5; and

3. Practitioners of psychoanalysis. Psychoanalysis is a theory of personality development and a technique of psychotherapy which requires advanced training and specialization. Only practitioners who hold licensure from the State Board of Psychological Examiners or who demonstrate exemption pursuant to N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-1.3 through 1.5 may use the title psychoanalyst.

13:42-1.3 Employment by a non-profit bona fide community organization; exemption from licensure

(a) Pursuant to N.J.S.A. 45:14B-6(a)3, an employee of a non-profit organization which is a bona fide community agency supported wholly or in a major part by public funds is exempted from licensure provided the employee is under the supervision of an authorized supervisor pursuant to the provisions of N.J.A.C. 13:42-4.2(a) and 4.6(b).

(b) For purposes of this section, the term "public funds" shall not mean payments by Medicare or Medicaid or other public or private insurance fund on behalf of an individual client to an individual provider (directly or through a professional service corporation) licensed by this Board.

(c) For purposes of this section, the term "non-profit bona fide community organization" shall mean:

1. An entity which is exempt from taxation pursuant to Section 501 of the United States Internal Revenue Code and which meets one of the following definitions. The organization shall be:

i. A corporate entity or any community chest, fund or foundation organized and operated exclusively for religious or charitable purposes; or

ii. A civic league or organization not organized for profit but operated exclusively for the promotion of social welfare; or

iii. A religious society devoted exclusively to charitable or religious purposes; or

2. An entity which has as its commitment the delivery of mental health services to clients who are amenable to those forms of psychological services customarily provided by the organization and which meets one of the following definitions:

i. The organization receives 50 percent or more of its funding in the form of public monies from a budget line or grant appropriated on a quarterly, twice-yearly, annual or other regular basis; or

ii. The organization has publicly and permanently committed itself to accepting, without numerical restriction, clients whose treatment shall be reimbursed either:

(1) By Medicaid or Medicare or other public insurance program funding; or

(2) By payment pursuant to contract with departments of State, county or municipal governments.

(d) Examples of organizations which may be considered bona fide non-profit community organizations under the definition set forth in (c)2 above include:

1. A private or public non-psychiatric hospital which is licensed by the New Jersey State Department of Health to provide health and medical care to the general public and which has a designated psychiatric unit; and

2. A mental health entity (other than a private office) which may be privately owned and operated and which offers outpatient mental health services to the general public.

(e) Within 30 days of the effective date of this rule or at the time employment of the unlicensed employee commences, whichever is later, the exempt entity or exempt practitioner shall submit to the Board a notice specifying the following information:

1. The public commitment of the organization and the basis for exemption under this section;

2. The name of the New Jersey licensed psychologist(s) or psychiatrist(s) supervising the offering of psychological services at the organization's facility; and

3. The name of each unlicensed employee who does or shall perform psychological services. The unlicensed employee may not be an independent contractor.

(f) The exempt entity may submit notice on behalf of the employee(s), and a single annual notice in January of each year will suffice to retain the exemption for that year. The exempt entity shall update the notice as necessary, and the Board will acknowledge receipt of each notice.

(g) Exemption shall be conditioned upon the employing organization continuing to meet the criteria of N.J.S.A. 45:14B-6 and this section.

13:42-1.4 Student of psychology; exemption from licensure

(a) For purposes of this section, "student of psychology" means a person who is presently registered at a regionally accredited institution and there matriculated into a graduate program of study leading toward a doctoral degree in psychology or an allied field.

(b) A student of psychology may be exempt from licensure under the Act provided that the student is under the supervision of an authorized supervisor as set forth in N.J.A.C. 13:42-4.2.

(c) The student's authorized supervisor shall be responsible for ensuring that:

1. The student's participation in the training program is a requirement of the graduate psychology program;

2. The student's transcript (or previous transcripts accepted by the degree-granting college or university as specifically supportive of the present graduate program leading toward the graduate degree) reflects prior academic training specific to the duties assigned to the student; and

3. The student is clearly identified as a student intern or extern prior to engaging in psychological practice.

13:42-1.5 Member of other professional group doing work of psychological nature; exemption from licensure

(a) The following individuals, whose recognized scope and accepted standards of practice include performance of work of a psychological nature, are exempt from licensure under the Practicing Psychology Licensing Act provided they do not hold themselves out to the public by any title or description stating or implying that such person is a psychologist or is licensed to practice psychology:

1. A licensed allopathic or osteopathic physician;

2. A licensed optometrist;

3. A licensed chiropractor;

4. A member of the clergy or pastoral counselor directly affiliated with a recognized ministry and employed by that ministry to provide psychological services;

5. A licensed attorney at law;

6. A licensed social worker under the supervision of a duly licensed mental health professional;

7. A licensed clinical social worker;

8. A licensed registered nurse certified by the Society of Clinical Specialists in Psychiatric Nursing of the American Nurses Association;

9. A person employed by the Federal government and solely in a Federal installation;

10. An authorized practitioner as designated by a New Jersey court of competent jurisdiction to perform services which may be psychological in nature pursuant to Rule of Court 5:3-3;

11. A school psychologist or guidance counselor who is certified by the New Jersey State Department of Education and who is employed by, and whose services are rendered in or for, a public or private school. No exemption shall be permitted to any school psychologist/counselor not certified by a governmental department of the State of New Jersey and not employed in an exempt setting as set forth in N.J.A.C. 13:42-1.3; and

12. A person engaged in the practice of alcohol, drug abuse or gambling intervention, prevention or treatment who is certified and employed in an exempt setting as set forth in N.J.A.C. 13:42-1.3 or who is certified and employed in a private setting supervised by a duly licensed mental health professional.

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(b) Representations to the public by any such groups or practitioners shall clearly indicate the person's primary licensed or exempt profession.

13:42-1.6 Ineligibility for exemption

A person denied a permit or license for reasons other than clear educational deficiency, or whose permit or license has been suspended, revoked or limited by the Board, shall be deemed ineligible to be employed in an exempt setting as defined in N.J.A.C. 13:42-1.3 or to qualify for practice under N.J.S.A. 45:14B-6 except by order of the Board.

SUBCHAPTER 2. INITIAL QUALIFICATIONS

13:42-2.1 Application; qualifications to sit for examination

(a) An applicant for licensure shall file with the Board an application together with all supporting material. The application form requests a brief summary of educational and employment experience. Supporting material required to be submitted with the application includes official transcripts; an abstract of the applicant's doctoral dissertation; and two certificates of good moral character. Documentation of two years of full time or full time equivalent supervised experience in the practice of psychology is required upon the applicant's completion of such experience.

(b) In order to be eligible to sit for the examination, an applicant shall have two years of full time or full time equivalent supervised experience in accordance with N.J.A.C. 13:42-4, and:

1. An earned doctorate, which meets the criteria set forth in (d) through (i) below, in the field of psychology from an educational institution recognized by the Board;

2. An earned doctorate, which meets the criteria set forth in (d) through (i) below, in a field allied to psychology; or

3. Equivalent training as set forth in N.J.A.C. 13:42-2.3.

(c) The institution at which the applicant earned his or her doctorate shall have been fully accredited during the entirety of the applicant's attendance by an accrediting body generally recognized within the national academic community. Alternatively, an educational institutional program shall have been granted continuous provisional accreditation by a recognized regional or national entity during the entirety of the applicant's attendance, with full accreditation having been awarded within five years of the candidate's graduation.

(d) No more than one-third of the doctoral credits shall have been transferred from other regionally/nationally accredited graduate schools.

(e) The doctoral degree must be based upon at least 40 doctoral credit hours earned specifically within the field of psychology and within a doctoral program requiring personal attendance at the degree-granting institution. Thirty-six of the required 40 credit hours shall be distributed across the following areas of graduate study:

1. Personality Theory and Human Development Theory: six credits;

2. Learning Theory and/or Physiological Psychology: six credits;

3. Psychological Measurement and Psychological Assessment: six credits;

4. Psychopathology: six credits;

5. Psychological therapy/counseling or Industrial/Organizational Psychology: six credits; and

6. Research and Statistical Design: six credits.

(f) The applicant shall submit evidence of an additional 20 credit hours, also specifically in the field of psychology, but which were not necessarily obtained as part of the doctoral program. The additional 20 credits can have been granted at a pre-doctoral or post-doctoral graduate level and must have been obtained as part of an educational program in a regionally accredited institution.

(g) If the Board finds the psychological nature of the dissertation or of any course submitted as fulfilling the requirements of this section to be questionable, the Board may, prior to making a determination, consult with the chairperson of the graduate department of psychology of the degree-granting institution and the chairperson of the graduate department in which the degree was earned, or with any other expert designated by the Board.

(h) The Board may, in its discretion, recognize up to six credits for a dissertation which is psychological in nature. The six credits may be used either to satisfy the requirement of having at least 40 doctoral credit hours specifically within the field of psychology and earned within a doctoral program, or to satisfy a credit deficiency in one or more of the required distribution areas of doctoral study.

(i) The Board may, in its discretion, accept up to nine credits, taken at a regionally accredited school or university, to remediate a deficiency in the requirements of (e) and (f) above.

13:42-2.2 Academic degree in a field allied to psychology

(a) An applicant for licensure based on receipt of an earned doctoral degree in a field allied to psychology shall arrange for transmittal to the Board of an official copy of all undergraduate and graduate transcripts from a regionally and/or nationally accredited educational institution or one which is recognized by the New Jersey State Department of Higher Education and by the Board.

(b) The doctorate degree must meet the criteria set forth in N.J.A.C. 13:42-2.1(d) through (f), and the doctoral dissertation must be clearly psychological in nature.

13:42-2.3 Equivalent training

(a) An applicant for licensure based on equivalent training shall submit evidence to the Board that the applicant has all of the following equivalent training:

1. An earned doctorate based upon a dissertation which is clearly psychological in nature from a regionally and/or nationally accredited educational institution or one which is recognized by the New Jersey State Department of Higher Education and by the Board;

2. Extensive experience, subsequent to receipt of the earned doctorate and for at least the five years immediately preceding application, in the field of applied psychology. The applicant's work in the field of applied psychology must be generally accepted by the local and/or regional psychological community as meeting the standards of professional psychological practice and contributing substantially to that community; and

3. Substantial formal post-doctoral study in a training program accredited by a bona fide accrediting body acceptable to the Board.

SUBCHAPTER 3. TEMPORARY PERMITS

13:42-3.1 One-year permit

(a) The Board shall issue a numbered temporary permit for the unsupervised practice of psychology for a period not to exceed one year to a psychologist who:

1. Is licensed as a psychologist by written examination in another state;

2. Otherwise qualifies for licensure pursuant to the Practicing Psychology Licensing Act, N.J.S.A. 45:14B-1 et seq.;

3. Meets all requirements of New Jersey law other than passing of the oral examination in this State; and

4. Has had at least one year of active post-doctoral experience in the practice of applied psychology within the five years immediately preceding application.

(b) The Board shall issue a numbered temporary permit for the unsupervised practice of psychology for a period not to exceed one year to an individual who has not been licensed in any state while that individual is completing the requirements of the New Jersey examination process, provided the individual:

1. Has an earned doctorate in psychology or an allied field from a recognized educational institution;

2. Has completed the supervised experience required for licensure under the Act;

3. Otherwise qualifies for licensure pursuant to the Practicing Psychology Licensing Act, N.J.S.A. 45:14B-1 et seq.;

4. Meets all requirements of New Jersey law other than passing of the oral examination in this State; and

5. Has had at least one year of active post-doctoral experience in the practice of applied psychology in an exempt setting within the five years immediately preceding application.

(c) The Board shall issue a numbered temporary permit for the supervised practice of psychology for a period not to exceed one year to individuals who meet the qualifications of (a)1 through 3

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or (b)1 through 4 above but who have not engaged in active practice for one year. Supervision shall be rendered consistent with the provisions of N.J.A.C. 13:42-4.

(d) The holder of a temporary permit pursuant to (a) above shall, within 45 days of issuance of the permit, submit to the Board a work sample for oral examination. Failure to meet this deadline may, upon notice to the permit holder, result in revocation of the permit.

(e) The holder of a temporary permit pursuant to (b) above shall, within 45 days of notification of successful completion of the written examination, submit to the Board a work sample for oral examination. Failure to meet this deadline may, upon notice to the permit holder, result in revocation of the permit.

(f) The holder of a temporary permit issued pursuant to (c) above shall, at least 90 days prior to the expiration of the permit, submit to the Board a work sample for oral examination. Failure to meet this deadline may, upon notice to the permit holder, result in revocation of the permit.

(g) The permit holder shall complete the examination process before the expiration of the permit.

(h) The permit holder shall assume only the number and kind of cases that can be readily transferred to a licensed psychologist in the event the permit holder fails the examination or has his or her permit suspended or revoked prior to the expiration of the one-year period.

(i) An individual granted permission to engage in temporary practice for one year by letter of the Board issued prior to commencement of the numbered permit system on (the effective date of these regulations) may continue to practice pursuant to that authorization for the duration of the one-year period.

13:42-3.2 Three-year permit

(a) The Board shall issue a numbered temporary permit for the supervised practice of psychology for a period not to exceed three years to a qualified individual who meets all requirements for admission to the examination except the requisite number of hours of post-doctoral supervised experience.

(b) The permit holder shall practice only in accordance with the standards of supervised practice set forth in N.J.A.C. 13:42-4.

(c) The permit holder shall obtain the required supervised experience and successfully complete the written and oral examinations prior to the expiration of the permit.

(d) The permit holder shall undertake only the number and kind of cases that may be readily transferred to a licensed psychologist should the permit holder fail to obtain the required supervised experience, have his or her permit suspended or revoked, or fail to successfully complete the examination process prior to the expiration of the three-year period.

(e) An individual granted permission to engage in temporary supervised practice for three years by letter of the Board issued prior to commencement of the numbered permit system on (the effective date of these regulations) may continue to practice pursuant to that authorization for the duration of the three-year period.

13:42-3.3 Limitation, suspension or revocation of permit by Board

(a) The Board may, upon notice to the permit holder limit, suspend or revoke the permit of an individual who fails the written or oral examination.

(b) The Board may, upon notice to the permit holder and the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, limit, suspend or revoke the permit of an individual who fails to properly discharge his or her responsibilities.

13:42-3.4 Extension of permit upon request of permit holder

(a) Upon the written request of a permit holder, the Board may, in its discretion, extend the temporary permit for good cause shown.

(b) The permit holder shall submit the request for extension, together with the required fee, no later than 30 days before expiration of the permit. The request shall include the reason for the extension.

(c) Extension of a permit may be conditioned upon the individual meeting the following requirements:

1. Immediate appearance by the permit holder, upon notice, before a committee of the Board to review the current caseload;

2. Acceptance of such limitations and conditions (for example, reduction of caseload, alterations in the supervisory arrangement, personal therapy, etc.) as the Board may deem necessary to promote competent psychological practice; and/or

3. Demonstration to the satisfaction of the Board that the welfare of the public is protected by extension of the permit, with appropriate limitations and conditions.

13:42-3.5 Return of permit

All temporary permits are the property of the Board. The holder of a temporary permit shall return the permit to the Board no later than 10 days after its expiration or within 10 days of notice of suspension or revocation of the permit.

SUBCHAPTER 4. SUPERVISION

13:42-4.1 Amount of supervision required

(a) An applicant for licensure shall be required to document at least two years of full time or full time equivalent supervised experience in the practice of psychology, at least one year of which shall have been completed subsequent to the applicant's receipt of his or her doctoral degree.

(b) The equivalent of one year of full time supervised experience shall be a minimum of 1,750 hours. The 1,750 hours shall include:

1. No more than 1,000 client contact hours;

2. At least 200 hours of supervision. At least 100 hours must be individual face-to-face supervision; the remaining 100 hours may be individual or group supervision. The ratio shall be one hour of supervision for each five hours of client contact per week; and

3. At least 550 hours in other work-related activities such as recordkeeping, consultations, report writing, etc.

13:42-4.2 Authorized supervisors

(a) Supervision shall be rendered by:

1. A psychologist licensed in New Jersey for at least two years; or

2. An individual who is clearly eligible for licensure. The Board shall deem an individual to be "eligible for licensure" for supervisory purposes only if the individual:

i. Possesses an earned doctorate in psychology or in a closely allied field granted by a recognized educational institution acceptable to the Board; or

ii. Is a psychiatrist who is board-certified in psychiatry or neurology; demonstrates substantial experience in the field of applied psychology or, in the case of a psychiatrist, substantial experience in the practice of psychotherapy; and demonstrates two years of supervised practice in the delivery of psychological or psychotherapeutic services in a professional setting.

(b) An applicant may receive no more than one-third of the required hours of supervision from a psychiatrist.

13:42-4.3 Responsibilities of applicant for three-year temporary permit

(a) An applicant for a three-year temporary permit shall have on file with the Board an application for licensure together with all required supporting material.

(b) The applicant shall request in writing the issuance of a temporary permit for the purpose of meeting the supervision requirement.

(c) A permit holder shall see only those clients assigned to the permit holder by the supervisor.

(d) A permit holder shall not set a professional fee or receive a professional fee from a client. A permit holder may be compensated only through the supervisor or employing entity as provided in N.J.A.C. 13:42-4.6.

(e) A permit holder shall limit client contact hours to a number reasonable for the educational purposes involved and shall, in any event, not exceed a total caseload of 20 clients or more than 20 client contact hours per week, or a total of 1,000 client contact hours per year.

(f) A permit holder shall not engage in unsupervised or independent practice.

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(g) A permit holder shall be responsible for the supervisor's compliance with the requirements of N.J.A.C. 13:42-4.4(a) through (c).

(h) A permit holder shall include his or her permit number on any printed in-office representations of practice.

(i) A permit holder shall not advertise.

13:42-4.4 Responsibilities of supervisor

(a) A supervisor shall obtain prior Board approval and shall provide the Board with a letter stating that the supervisor has agreed to enter into a supervisory arrangement with the permit holder.

(b) A supervisor shall supervise no more than three permit holders at any one time, except for good cause shown and at the discretion of the Board.

(c) Every six months and at the completion of the supervision, the supervisor shall document the supervised experience on a form provided by the Board. The information to be supplied on the form includes the dates during which the permit holder was under supervision, the nature of the cases assigned, and the proficiency rating earned by the permit holder.

(d) A supervisor shall ensure that the permit holder has, at all times, a current and valid Board permit or other required authorization.

(e) A supervisor shall provide adequate and timely evaluations, as required by the work setting, to employees, permit holders, students and others whose work is being supervised.

(f) Prior to a permit holder's commencement of client treatment, the supervisor shall obtain a written disclosure form, which shall be signed by the client and retained as part of the client record, acknowledging that the client has been informed that:

1. Services are to be rendered by a permit holder who is not a licensed psychologist; and

2. Insurance companies may not necessarily reimburse services rendered by a person not licensed by this Board, notwithstanding supervision by a licensed psychologist.

(g) A supervisor shall retain full professional responsibility for setting fees, billing clients and collecting fees from clients consistent with the provisions of N.J.A.C. 13:42-10.10 and 10.11.

(h) A supervisor shall provide professional working conditions, constructive consultation and experience opportunities.

(i) A supervisor shall not condone or knowingly permit the permit holder to practice without supervision or independently.

(j) A supervisor shall not enter into supervisory arrangements involving a potential conflict of interest such as, but not limited to, arrangements with:

i. Family members;

ii. Those with whom the supervisor has close personal associations;

iii. Those with whom the supervisor has financial relationships (such as creditor-debtor), other than as specifically permitted by N.J.A.C. 13:42-4.6; or

iv. Those with whom the licensee has a therapist/client relationship.

13:42-4.5 Supervision of individuals exempt from licensure

(a) A psychologist may supervise services of a psychological nature rendered in:

1. A private practice setting by a health care professional exempt from licensure pursuant to N.J.S.A. 45:14B-8; and

2. An exempt non-profit bona fide community organization as defined in N.J.A.C. 13:42-1.3.

(b) The supervisor shall ensure that the exempt supervisee complies with all Board regulatory requirements (including preparation of client records) and with accepted standards of professional and ethical practice of the exempt agency or exempt health care professional.

13:42-4.6 Financial arrangements between supervisor and supervisee

(a) The supervisor may segregate fees received from clients being treated by the supervisee in recognition of the fact that fees charged to such clients shall be less than the usual, reasonable and customary fees charged by the supervisor to his or her own clients.

(b) Financial arrangements between the supervisor and supervisee shall be reasonable and may take into account the special teaching arrangement which forms the context of the relationship. For example, the supervisor may:

1. Designate the supervisee as an "independent contractor under supervision," if permitted by tax authorities;

2. Designate the supervisee as a part-time employee; or

3. Agree to pay the supervisee the entirety of the client fees charged by the supervisor.

(c) The supervisor shall charge the supervisee separately, if at all, for the supervision itself or for ancillary costs such as rent for use of premises, equipment, malpractice insurance, etc.

SUBCHAPTER 5. EXAMINATION

13:42-5.1 Board-approved written examination; oral examination

(a) A candidate who has been admitted to sit for examination shall take the Examination for Professional Practice in Psychology sponsored by the American Association of State Psychology Boards. A satisfactory score is defined minimally as one standard deviation below the national mean of all doctoral level candidates taking the examination on a given date.

(b) A candidate who passes the written examination shall then take an oral examination of his or her professional practice based on a work sample in accord with guidelines to be supplied to the candidate by the Board and as follows:

1. The candidate shall, within 45 days of notification of successful completion of the written examination, present a current work sample representative of the candidate's present practice. For the purposes of this rule, "current" work sample is defined to mean a work sample either in progress or completed no more than one year prior to its submission for the oral examination. The dates of client service shall be specifically mentioned on the cover page. Exceptions may be granted for good cause shown.

2. The candidate shall identify the work sample by the area of the candidate's specialty.

3. The text of the work sample shall be typed and double spaced and shall not exceed 20 pages in length. All tests and protocols used as the basis for professional intervention shall be presented as appendices.

(c) The examiners shall tape the oral examination for the purpose of creating a record. The candidate shall not tape the oral examination.

13:42-5.2 Examination review procedures

(a) A candidate who fails the written examination may request a handscoring of answer sheets, copy of individual answer sheet or role-feedback as available from the Professional Examination Service (PES). The candidate shall be responsible for payment of any fees required by the PES. The candidate's written request for review must reach the Board's Executive Director within 45 days of the date of the letter of notification of examination results.

(b) A candidate who fails the oral examination may request a review of his or her oral examination tape. The candidate's written request for review must reach the Board's Executive Director within 45 days of the date of the letter of notification of examination results. The Executive Director will make the tape of the oral examination available to the candidate at the Board office on a mutually convenient date. Neither the candidate nor an agent of the candidate may tape the Board's copy of the oral examination tape during this or any review of the tape of the oral examination.

(c) Following review of the examination tape, a candidate who failed the oral examination may request reconsideration of the decision. The candidate's written request for reconsideration must reach the Board's Executive Director within 45 days of the date of the examination review. The request for reconsideration must be limited to no more than 5 8½ inch by 11 inch sized pages, single spaced, with normal size type set and standard margins. Only one side of the page may be used.

(d) The Board shall grant a request for reconsideration only upon the candidate's showing of good cause establishing that the request is meritorious and made in good faith. Good cause for this purpose shall mean:

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1. Proof of unusual circumstances surrounding the examination which adversely and significantly influenced the candidate's performance;

2. Proof that the scope of the examination conducted did not sufficiently address the candidate's professional work sample;

3. Proof of examiner bias against the candidate, the candidate's orientation or kind of work; or

4. Proof of a substantial and material error on the part of the examiners.

(e) If, upon review of the written request for reconsideration, the Board determines that the candidate has demonstrated good cause for reconsideration, the Board may designate a subcommittee to review the matter and make a recommendation to the Board after conducting such inquiry or investigation as the subcommittee deems necessary. The subcommittee shall subsequently present to the Board the following information in closed session: the basis for the request for reconsideration; the reasons advanced by the applicant for changing the Board's previous decision; and the subcommittee's recommendation to sustain, modify, overturn or vacate the Board's previous decision and the reasons for that recommendation.

(f) The Board shall promptly mail to the candidate a copy of the Board's final decision and supporting reasons.

(g) A transcript of the oral examination may be prepared by a shorthand reporter, at the candidate's expense, only if the transcript is required for appellate review by the Superior Court.

13:42-5.3 Out-of-State psychologists; admittance to oral examination

(a) An out-of-State psychologist shall be admitted to take the oral examination in New Jersey provided the individual can demonstrate to the satisfaction of the Board that he or she:

1. Has taken the Board-approved written examination in another state;

2. Has passed the examination at the minimum level established by the Board and in effect at the time of application; and

3. Meets all other requirements for licensure.

(b) An out-of-State psychologist who can demonstrate proof of meeting all requirements for licensure other than the Board-approved written examination shall be admitted to take the oral examination in New Jersey provided the individual can demonstrate to the satisfaction of the Board completion of 20 years of licensed, responsible and competent practice in another state.

(c) The Board shall not recognize licensing examinations other than the Board-approved examination sponsored by an individual state or other entity, if completed subsequent to January 1, 1980.

13:42-5.4 License without examination

A psychologist who holds a diploma from the American Board of Professional Psychology awarded by examination shall be licensed following satisfactory completion of an oral interview with the Board or designated member(s) thereof.

13:42-5.5 Subversion of the licensing examination process

(a) Any individual found by the Board to have engaged in conduct which subverts or attempts to subvert the licensing examination process may, at the discretion of the Board, have his or her scores on the licensing examination withheld or declared invalid, be found ineligible for licensure, be disqualified from the practice of the pertinent profession, and/or be subject to the imposition of other appropriate sanctions pursuant to N.J.S.A. 45:1-22.

(b) Conduct which subverts or attempts to subvert the licensing examination process includes:

1. Conduct which violates the security of the examination materials, such as removing from the examination room any of the examination materials; taping, reproducing or reconstructing any portion of the licensing examination; aiding by any means in the reproduction or reconstruction of any portion of the licensing examination; or selling, distributing, buying, receiving or having unauthorized possession of any portion of a current or future licensing examination;

2. Conduct which violates the standard of test administration, such as communicating with any other examinee during the administration of the licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the licensing examination; or having in one's possession during the administration of the licensing examination any copying or taping equipment, or any books, notes, written or printed materials or data of any kind, other than the examination materials distributed; or

3. Conduct which violates the credentialing process, such as falsifying or misrepresenting educational credentials or other information required for admission to the licensing examination, impersonating an examinee, or having an impersonator take the licensing examination on one's behalf.

13:42-5.6 Failure of examination; when retaking permitted

(a) The written examination may be retaken at any subsequent scheduled examination session provided that all applicable requirements have been satisfied.

(b) The oral examination may be retaken only as follows:

1. First reexamination no sooner than six months after the first examination;

2. Second reexamination no sooner than one year after the date of the first reexamination;

3. Successive reexamination no sooner than one year after the date of the previous reexamination and after having shown proof of meeting any additional professional training which the Board may require.

SUBCHAPTER 6. BOARD FEES

13:42-6.1 Board fees

(a) Charges for examinations, licensure and other services are:

1. Application fee: $100.00.

2. Examination fee: $200.00 written, $100.00 oral.

3. Initial license fee:

i. During the first year of a biennial license renewal period: $210.00.

ii. During the second year of a biennial license renewal period: $105.00.

4. License renewal fee, biennial: $210.00.

5. Late renewal fee in addition to biennial renewal: $50.00.

6. Reinstatement fee in addition to biennial renewal fee: $150.00.

7. Temporary permit:

i. $75.00 plus $25.00 for each additional supervisor.

ii. Review of extension request for one-year and three-year permits, each: $25.00.

8. Replacement wall certificate: $50.00.

9. Verification of licensure: $35.00.

10. Duplicate renewal certificate: $25.00.

(b) It is the candidate's responsibility to see that all mandated fees reach the Board office as follows:

1. Application, examination, re-examination and reinstatement fees are required to initiate Board action in one's behalf.

2. An initial license fee is required upon notice of successful completion of candidacy and before issuance of a license.

3. A license renewal fee must reach the Board office by June 30 of the renewal year in order to avoid a late renewal fee.

4. A late renewal fee must reach the Board office by December 31st of the renewal year in order to avoid removal from the licensee lists and a reinstatement fee prior to reinstatement.

SUBCHAPTER 7. ACCEPTABLE PROFESSIONAL PRACTICE

13:42-7.1 Solo

(a) A licensee practicing solo may employ or otherwise remunerate the following individuals to render professional services only in circumstances where quality control of the employed practitioner's professional practice can be and is lawfully supervised and evaluated by the licensee:

1. Other licensed practitioners to render services within the scope of practice of each employee's license; and

2. Practitioners who are authorized to practice psychology under an exemption from licensure pursuant to N.J.A.C. 13:42-1.3.

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(b) A licensee with a restricted scope of practice shall not employ a licensee or practitioner with an unrestricted license to practice psychology.

(c) A licensee may employ ancillary non-licensed staff, limited to:

1. Clerical staff;

2. Permit holders;

3. Biofeedback technicians, as defined in N.J.A.C. 13:42-7.3; and

4. Neuropsychometric technicians, as defined in N.J.A.C. 13:42-7.4.

(d) Any additional types of employees other than those in (c) above may be employed within the professional practice only with the advance review and approval of the Board.

13:42-7.2 Partnership or professional association

(a) A licensee may practice in a partnership or professional association of licensed health care professionals provided that the licensee retains authority to exercise professional judgment within accepted standards of practice regarding care, skill and diligence in examinations, diagnosis and treatment of the licensee's individual clients.

(b) The professional services offered by each practitioner, whether a partner or shareholder, shall be the same or shall be in a closely allied professional health care field.

(c) If the scope of practice authorized by law for each such person differs, any document used in connection with professional practice, including, but not limited to, professional stationery, business cards, advertisements of listings and bills, shall designate the field to which such person's practice is limited.

(d) The term "Associates" in the name of a professional office connotes an actual group enterprise such as a professional association or partnership. The term "Associates" shall not be utilized to refer to individuals sharing office expenses or rental space but practicing independently of each other or having the relationship of independent contractor.

13:42-7.3 Employer of biofeedback technician

(a) For purposes of this section, "biofeedback" means the application of bio-regulation procedures to the management of cognitive and physiological status. The feedback may encompass smooth muscle, striated muscle, cardiac muscle, brain wave, blood pressure, skin conduction and other physiological measures.

(b) For purposes of this section, "direct supervision" means that the licensee shall be constantly accessible, either on-site or through electronic communication, and available to render assistance when required and that the licensee shall retain full professional responsibility for client care and treatment.

(c) A licensee with specialized training in biofeedback may employ a biofeedback technician on the office premises, as appropriate to the primary practice of the employer, only under the following circumstances:

1. The licensee shall provide instruction to the technician; ascertain that the technician has received education and training appropriate for the work assigned; ensure that the technician obtains continuing education credits consistent with standards in the field; and regularly direct, supervise and monitor the technician's work;

2. The licensee shall provide direct supervision to the technician, as defined in (b) above; and

3. The activities of the technician shall be limited to:

i. Operating machinery for monitoring feedback, including positioning of the monitoring equipment; and

ii. Providing instruction in the use of the machinery to the client.

13:42-7.4 Employer of neuropsychometric technician

(a) For purposes of this section, "direct supervision" means that the licensee shall be constantly accessible, either on-site or through electronic communication, and available to render assistance when required and that the licensee shall retain full professional responsibility for client care and treatment.

(b) A licensee may employ a neuropsychometric technician as an assistant, for the purpose of administering certain classes of sensory, motor and other measures, only under the following circumstances:

1. The licensee shall provide instruction to the technician; ascertain that the technician has received education and training appropriate for the work assigned; ensure that the technician obtains continuing education credits consistent with standards in the field; and regularly direct, supervise and monitor the technician's work;

2. The licensee shall provide direct supervision to the technician, as defined in (a) above; and

3. The activities of the technician shall be limited to the administration of neuropsychological tests which have specific mechanical administration procedures and which do not require interpretation, querying of the examinees about individual items, or other judgments.

(c) The role of the technician is that of a paraprofessional assistant in test administration, and any deviation from that role shall be deemed the unauthorized practice of psychology.

(d) Specifically excluded from the scope of activities of the technician are administration of individual intelligence tests and projective techniques, which may be given only by a licensed practicing psychologist, a permit holder under supervision, or a person doing work of a psychological nature in an exempt setting.

13:42-7.5 Shareholder or employee of a general business corporation

(a) A licensee may offer health care services as an employee of a general business corporation in this State only in one or more of the following settings. Any such setting shall have a designated director of psychological services or a medical director licensed in this State who is regularly on the premises and who (alone or with other persons authorized by the State Department of Health, if applicable) is responsible for licensure verification, credentialing and quality control of the provision of psychological services.

1. The corporation is licensed by the New Jersey Department of Health as a health maintenance organization, hospital, long or short-term care facility, ambulatory care facility or other type of licensed health care facility or health care provider. The above may include a licensed facility which is a component part of a for-profit corporation employing or otherwise remunerating licensed psychologists;

2. The corporation is not in the business of offering treatment services to the public but maintains a clinic for the purpose of providing psychological services to employees and/or for monitoring the health environment of employees. The licensee rendering care or evaluation in this setting shall comply with the provisions of N.J.A.C. 13:42-8 regarding preparation, maintenance and release of treatment and health monitoring records;

3. The corporation is a non-profit corporation sponsored by a union, social, religious or fraternal organization providing health care services to members only; and/or

4. The corporation is an accredited educational institution which maintains a medical or psychological service clinic for health care service to students and faculty.

(b) A licensee may also have an equity or employment interest in a general business corporation which offers to contract with a licensed practitioner or professional service corporation to provide services exclusively of a non-professional nature such as routine office management, hiring of non-professional staff, provision of office space and/or equipment and servicing thereof, and billing services. The general business corporation shall make no determination regarding establishment of client fees or modification or waiver thereof in an individual case and shall make no representations to the public of offering, under its corporate name, health care services which require licensure.

(c) A licensee employed or having an equity interest in any of the practice forms listed in (a) and (b) above shall terminate such employment or sever professional affiliation upon acquiring personal knowledge that the entity regularly fails to provide or observe the quality assurance mechanisms listed in N.J.A.C. 13:42-7.7 and refuses, upon request, to implement such mechanisms. A licensee terminating employment or affiliation with a general business corporation for reasons required by this section shall so notify the Board.

13:42-7.6 Managed health care plans

(a) For purposes of this section, "managed health care plans" include, but are not limited to, plans involving wholly or partially pre-paid medical/psychological services. By way of example, these

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include plans commonly described as health maintenance organizations, preferred provider organizations, competitive medical/psychological plans, individual practice associations, or other similar designations.

(b) A licensee may enter into a plan agreement which provides interim remuneration to licensees by making provisional allocation of percentages of plan-member fees, whether denominated as reserves, pools, withholds, holdbacks, etc., for the purpose of funding all portions of the health services plan.

(c) A licensee may participate in a plan which requires a purchase of shares for the purpose of providing start-up funds, provided that any profits of the plan are paid solely in accordance with the principles listed in this section and the licensee complies with the following professional requirements:

1. The licensee retains authority at all times to exercise professional judgment within accepted standards of practice regarding care, skill and diligence in examinations, diagnosis and treatment of each client;

2. The licensee retains authority at all times to inform the client of appropriate referrals to any other health care providers:

i. Whether or not those persons are provider-members of the plan; and

ii. Whether or not the plan covers the cost of the non-member provider's services to the client;

3. Plan clients are informed that they may be personally responsible for the cost of treatment by a provider who is not a member of the plan or for treatment which the plan administration does not approve; and

4. Plan clients are informed of the financial arrangements between the licensee and the plan, including financial incentives and disincentives established by the plan affecting availability or provision of treatment or other psychological services to plan members.

13:42-7.7 Conduct of professional practice; quality control

(a) A licensee shall establish policies and procedures with respect to licensed or exempt personnel who are employed by or under the supervision of the licensee. The policies and procedures shall include, but need not be limited, to the following:

1. Designation of a licensed practitioner responsible for:

i. Hiring professional staff and verifying current licensing credentials, permits or other educational/training credentials required by law or pertinent agency rule (for example, recertifications, continuing professional education, current biennial registration or permits, etc.); and/or

ii. The professional propriety of billing and of advertising or other representations;

2. Identification of the nature of the psychological services which shall be offered at the practice location;

3. Policies for maintenance, registration and inspection of professional equipment;

4. Standards for recordkeeping as to client records, billing records, and such other records as may be required by law or rule;

5. Policies for security, including confidentiality of client records; and

6. Procedures for periodic audit of client records and of professional services to assure quality professional care on the premises.

13:42-7.8 Real estate arrangements

(a) A licensee may be an owner, investor or lessor in real estate utilized for the conduct of a professional practice, provided that rent, dividends or any other forms of remuneration are received solely on the basis of the investment or fair market value, as applicable to the circumstances.

(b) A licensee may lease space to or from another licensed health care professional to whom clients are referred only where rent is a fixed fee determined by the fair market value, or less, and is for a regular term and not for sporadic use of the space.

(c) A licensee may lease professional space from a commercial entity on any arrangements consistent with standard business practice in the community, provided the arrangements do not affect the licensee's professional discretion in matters including choice of clients, professional services offered, or fees.

(d) The establishment of any lease, investment or other commercial relationship for the conduct of professional practice other than as set forth in this section shall require Board approval for good cause shown.

SUBCHAPTER 8. CLIENT RECORDS: CONFIDENTIALITY

13:42-8.1 Preparation and maintenance of client records

(a) A licensee shall prepare and maintain separately for each client a permanent client record which accurately reflects the client contact with the licensee whether in an office, hospital or other treatment setting.

(b) A licensee shall make entries in the client record contemporaneously with the services provided. A licensee may dictate an entry for later transcription, provided the transcription is dated and identified as "preliminary" until the licensee reviews the transcription and finalizes the entry in the client record.

(c) The licensee shall include in the client record material pertinent to the nature and extent of the professional interaction, for example:

1. The location of treatment;
2. The client name, address and telephone number;
3. The client complaint on intake;
4. Medical history recognized as of potential significance;
5. Past and current medications;
6. Significant social history;
7. Findings on appropriate examination;
8. Raw data and interpretation of tests administered;
9. Current functional impairments and rating levels thereof;
10. A diagnostic impression;
11. Contemporaneous and dated progress notes including specific components of treatment;
12. Dates of all treatment;
13. An evaluation of progress;
14. A prognosis;
15. The client identity on each page;
16. Fees charged and paid;
17. The identity of an individual treatment provider (and supervisor, if any); and
18. If services are rendered by a permit holder, the written disclosure form signed by the client as required by N.J.A.C. 13:42-4.5(f).

(d) The client record shall contain information regarding referrals to other treating professionals together with reports and records provided by other treating professionals and integrated into the client's treatment.

(e) A licensee may make corrections or additions to an existing record provided that each change is clearly identified as such, dated and initialed by the licensee. Any other alteration of records shall be deemed professional misconduct.

(f) When records are to be maintained as confidential, the licensee shall establish and maintain a procedure to protect such records from access by unauthorized persons.

(g) The licensee shall retain the permanent client record for at least seven years from the date of last entry, unless otherwise provided by law.

(h) The licensee shall establish procedures for maintaining the confidentiality of client records in the event of the licensee's relocation, retirement or death and shall establish reasonable procedures to assure the preservation of client records in the event of the licensee's separation from a group practice.

13:42-8.2 Use of personal or other computer to prepare client records

(a) A licensee who prepares a client record maintained solely on a personal or other computer shall use a write-protected program which:

1. Contains an internal permanently activated date and time recordation for all entries;

2. Automatically prepares a back-up copy of the file; and

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3. Is designed in such manner that, after the licensee "signs" by means of a confidential personal code ("CPC"), the entry cannot be changed in any manner.

(b) Notwithstanding the permanent status of a prior entry, the licensee may make a new entry at any time and may indicate correction to a prior entry.

(c) The licensee shall include in the client record at least two forms of identification; for example, name and record number or any other specific identifying information.

(d) The licensee shall finalize or "sign" the entry by means of a CPC. Where more than one individual is authorized to make entries into the computer file of any client record, the licensee responsible for the practice shall assure that each such person obtains a CPC and uses the program in the same manner.

(e) A licensee wishing to continue a system of computerized client records which does not meet the requirements of this section shall promptly initiate arrangements for modification of the system, which must be completed by (one year after the effective date of these regulations). In the interim, the licensee shall, on the date of the first treatment of each client treated subsequent to (the effective date of these regulations), print out a hard copy of the entire computer recorded client record. The printout shall be dated and initialled by the licensee. Thereafter, a hard copy shall be prepared for each subsequent visit, continuing to the date of the changeover of computer program, with each page initialled by the licensee. The initial printout and the subsequent hard copies shall be retained as a permanent part of the client record.

13:42-8.3 Access to copy of client record

(a) For purposes of this section, "authorized representative" means, but is not necessarily limited to, a person designated by the client or a court to exercise rights under this section. An authorized representative may be the client's attorney or an agent of an insurance carrier with whom the client has a contract which provides that the carrier be given access to records to assess a claim for monetary damages or reimbursement. If the client is a minor, a parent or guardian who has custody (whether sole or joint) will be deemed to be an authorized representative.

(b) A licensee may require the record request to be in writing. No later than 30 days from receipt of a request from a client or duly authorized representative, the licensee shall provide a copy of the client record and/or billing records, including reports relating to the client. Limitations on this requirement are set forth in (e) and (f) below and in N.J.A.C. 13:42-9.

(c) The licensee may elect to provide a summary of the record, as long as the summary adequately reflects the client's history and treatment, unless otherwise required by law.

(d) A licensee may charge a reasonable fee for the preparation of a summary and reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the costs of transcription or copying.

(e) This section shall not require a licensee to release to a minor client's parent or guardian records or information relating to the minor's sexually transmitted disease, termination of pregnancy or substance abuse.

(f) A licensee may withhold information contained in the client record from a client or the client's guardian if, in the reasonable exercise of his or her professional judgment, the licensee believes release of such information would adversely affect the client's health or welfare.

1. That record or the summary, with an accompanying explanation of the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:

i. The client's attorney;

ii. Another licensed health care professional; or

iii. The client's health insurance carrier (except as may be limited by N.J.A.C. 13:42-9).

(g) Records maintained as confidential pursuant to N.J.A.C. 13:42-8.1(c) shall be released:

1. If requested or subpoenaed by the Board or the Office of the Attorney General in the course of an investigation;

2. Pursuant to an order of a court of competent jurisdiction;

3. Except as limited by N.J.A.C. 13:42-8.4, upon a waiver of the client or an authorized representative to release the client record to any person or entity, including to the Violent Crimes Compensation Board; or

4. In order to contribute appropriate client information to the client record maintained by a hospital, nursing home or similar licensed institution which is providing or has been asked to provide treatment to the client.

(h) The licensee's obligation hereunder to release information shall include the obligation to complete forms or reports required for third party reimbursement of client treatment expenses. The licensee may charge reasonable fees for completion of reports other than health insurance claim forms, for which no fee may be charged pursuant to N.J.S.A. 45:1-12.

(i) When a request is made for release of already completed reports to enable the client to receive ongoing care by another practitioner, or for use in judicial proceedings, the licensee shall not require prior payment for the professional services to which such reports relate as a condition for making such reports available. A licensee may, however, require advance payment for a report prepared for services as an expert witness.

13:42-8.4 Access by a managed health care plan to information in client record

With regard to a client whose treatment cost is covered by a health insurance plan, including a managed health care plan, a licensee shall make available, on request of the client or duly authorized representative, all information required pursuant to N.J.A.C. 13:42-11.4.

13:42-8.5 Confidentiality

(a) A licensee shall preserve the confidentiality of information obtained from a client in the course of the licensee's teaching, practice or investigation. However, if in the licensee's judgment, exercised in accordance with the standards of the profession, any of the following circumstances occur, the licensee shall reveal the information only to appropriate professional workers, public authorities and the threatened individual(s) or their representatives:

1. There is a clear and imminent danger to the individual or the public;

2. There is probable cause to believe that an identifiable potential victim of a client is likely to be in danger; or

3. Release of such information as is otherwise mandated by law, such as, but not limited to, N.J.S.A. 2A:62A-17.

(b) A licensee may discuss the information obtained in clinical or consulting relationships, or in evaluating data concerning children, students, employees and others, only for professional purposes and only with persons clearly connected with the case.

(c) A licensee may reveal, in writing, lectures or other public forums, personal information obtained during the course of professional work only as follows:

1. With prior consent of the clients or persons involved;

2. Where the identity of the client or person involved is adequately disguised; or

3. Where the original source and other persons involved have given their express permission to share confidential communications with the parties interested therein.

(d) A licensee may reveal the identity of research subjects only if the subjects have granted explicit permission.

(e) A licensee may release confidential documents, testimony or other information contained in the client record only in accordance with the provisions of N.J.A.C. 13:42-8.3 and this section.

SUBCHAPTER 9. ADVERTISING

13:42-9.1 Definitions

For the purposes of this subchapter, the following terms shall have the indicated meanings unless the context clearly indicates otherwise:

"Advertisement" means an attempt directly or indirectly by publication, dissemination or circulation in print, electronic or other media which directly or indirectly induces or attempts to induce any person or entity to purchase from a Board licensee, or enter into an agreement to purchase, services, treatment or goods related thereto.

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"Board licensee" means any professional licensee of the State Board of Psychological Examiners.

"Electronic media" include, but are not limited to, radio, television, telephone and other electronic means of communication. The term does not include communications made by sound equipment from a motor vehicle or other promotional media.

"Professional service" means a service which a Board licensee or professional association performs or lawfully authorizes a person under supervision to perform.

"Print media" includes newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, signs, direct mail, matchcovers and other items disseminated by means of the printed word. The term shall not include aerial displays.

"Range of fees" means a statement of fees containing an upper and lower limit on the fees charged for services or goods offered by a Board licensee.

13:42-9.2 Advertising; general requirements

(a) A Board licensee (but not a permit holder) may provide information to the public by advertising in print or electronic media.

(b) A licensee shall be able to substantiate the truthfulness of any material, objective assertion or representation set forth in an advertisement, when requested by the Board to do so.

(c) A licensee who is a principal, partner or officer of a firm or entity identified in an advertisement which offers psychological services or goods shall be responsible for the form and content of any advertisement disseminated by or on behalf of a licensee affiliated with the firm.

(d) A licensee shall assure that an advertisement does not misrepresent, suppress, omit or conceal a material fact. Omission, suppression or concealment of a material fact includes use of any print, language or format which directly or indirectly obscures a material fact under circumstances where the licensee knows or should know that the omission is improper or prohibits a prospective client from making a full and informed judgment on the basis of the information set forth in the advertisement.

13:42-9.3 Minimum content

(a) A licensee shall include the following in all advertisements and professional representations (other than an office entry sign), including advertisements in a classified directory, business cards and professional stationery:

1. The name and license number of the Board licensee. Advertisements of a group practice, including professional service corporations and practices under a trade name, shall include the name and license number of all members of the group; and

2. The street address and telephone number of the practice location.

13:42-9.4 Use of professional credentials and certifications

(a) A licensee shall accurately and objectively represent his or her competence, education, training and experience.

(b) Advertisements which include information on professional credentials shall contain the highest academic degrees attained relating to the practice of psychology and shall refer only to degrees obtained from an accredited academic institution or an academic institution acceptable under the rules of the New Jersey State Department of Higher Education.

(c) A licensee may advertise only those certifications obtained from bona fide accrediting bodies and directly related to the practice of psychology.

(d) Nothing in this section shall preclude any truthful and nondeceptive statement in regard to education or experience in a particular area of psychology.

13:42-9.5 Advertising making reference to or setting forth a fee; required disclosures

(a) Advertising making reference to or setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for specifically described professional services.

(b) Advertising making reference to or setting forth a fee shall include the following disclosures:

1. All relevant and material variables and considerations which are ordinarily included in the advertised services so that the fee will be clearly understood by prospective clients. In the absence of such disclosures, the stated fees shall be presumed to include everything ordinarily required for the advertised services;

2. A specific delineation of additional services contemplated and the fee to be charged therefor. In the absence of such disclosures, the licensee shall be prohibited from charging an additional fee for the advertised service; and

3. The time period during which the advertised fee will remain in effect. In the absence of such disclosure, the advertisement shall be deemed to be effective for 30 days from the date of the advertisement's initial publication.

(c) The advertisement of a fee shall not preclude downward adjustment or waiver of a fee between the professional and the client in individual circumstances.

13:42-9.6 Use of testimonials

(a) A licensee may use an advertisement containing either a lay or an expert testimonial provided that:

1. The testimonial is based upon the testimonial giver's personal knowledge or experience obtained from a provider relationship with the licensee or upon the testimonial giver's direct personal knowledge of the subject matter of the testimonial; and

2. The licensee obtains, prior to the use of the testimonial, a signed, notarized statement and release indicating the testimonial giver's willingness to have his or her testimonial used in the advertisement.

(b) A layperson's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon.

(c) An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the rendering of a bona fide statement or opinion.

(d) A licensee shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Board, may be deemed professional misconduct.

13:42-9.7 Prohibited types or methods of advertising

(a) A licensee shall not make any statement or claim or make use of any professional format which is false, fraudulent, misleading or deceptive with regard to the performance of professional services or accepted standards of professional practice.

(b) A licensee shall not use the word "doctor" or an otherwise incomplete and misleading designation when offering to perform professional services without also indicating that the licensee is a psychologist.

(c) A licensee shall not guarantee that satisfaction or a cure will result from the performance of professional services.

(d) A licensee shall not claim or use any secret or special method of treatment and/or diagnostic technique which the licensee refuses to divulge to the Board.

(e) A licensee shall not make claims of professional superiority with regard to services or goods offered or with regard to apparatus, equipment or technology utilized unless the licensee can substantiate such claims.

(f) A licensee shall not communicate any fact, data or information which may identify a client without the client's written consent.

(g) A licensee shall not offer or promote a professional service which the licensee knows or should know is beyond the licensee's ability to perform.

(h) A licensee shall not permit an advertisement to contain any technique or communication which appears to intimidate, exert undue pressure or unduly influence a prospective client.

(i) A licensee shall not engage in any in-person solicitation with a prospective client, either directly or indirectly through an agent, employee or representative.

13:42-9.8 Retention of advertisements

(a) The licensee shall retain, for a period of three years from the date of initial publication or dissemination, a copy of every advertisement appearing in print media as well as a video or audio tape of

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every advertisement communicated by electronic media. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

(b) A licensee who advertises through the use of testimonials shall maintain documentation relating to the testimonial for a period of three years from the date of the last use of the testimonial. Documentation shall include, but not be limited to:

1. The name, address and telephone number of the testimonial giver identified in the advertisement;

2. The type and amount or value of compensation; and

3. The notarized statement and release required pursuant to N.J.A.C. 13:42-9.6(a)2.

(c) The licensee shall make copies of all advertisements and documentation concerning testimonials available for review upon request by the Board or its designee.

13:42-9.9 Misleading implications of licensure

(a) A person not licensed under the Practicing Psychology Licensing Act is prohibited from implying licensure under the Act by using a title or description which, when used in combination with other circumstances, would lead a reasonable person to think that the individual is a licensed psychologist or is authorized to perform professional services which only a licensed psychologist can offer. Examples of such conduct, whether for recompense or not, include:

1. Representing that he or she has:

i. A graduate degree or is a candidate therefor in psychology or an allied field;

ii. Membership in psychological organizations;

iii. Training or certification in applied psychological methods; or

iv. Professional association and identification with a licensed psychologist, unless the individual is the holder of a duly authorized and valid Board permit or is otherwise duly authorized to engage in a health care profession with a psychologist; or

2. Using names or professional or occupational titles including "counselor," "psychotherapist," "therapist," "analyst," or "psychoanalyst" and related terms or forms unless clearly qualified by reference to another profession or group exempt from licensure under the Act pursuant to N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-1.5.

SUBCHAPTER 10. GENERAL OBLIGATIONS OF A LICENSEE

13:42-10.1 Posting of practice authorization and notification of availability of fee information

(a) Every licensee shall prominently display in every place of conducting independent practice the following notice:

(Name of Individual) is licensed by the Board of Psychological Examiners, an agency of the Division of Consumer Affairs. Any member of the consuming public may notify the Board of any complaint relative to the practice conducted under this license at the Division of Consumer Affairs, Board of Psychological Examiners, Post Office Box 45017, 124 Halsey Street, Newark, New Jersey 07101.

(b) Every licensee shall post a conspicuous notice in the waiting room stating: "INFORMATION ON PROFESSIONAL FEES IS AVAILABLE TO YOU ON REQUEST."

13:42-10.2 Notification of change of address; service of process

(a) Each licensee and permit holder shall notify the Board, in writing, within 30 days of any change in the address on file with the Board and shall specify whether the address is a residence or employment address.

(b) Service of an administrative complaint or other process initiated by the Board, the Attorney General or the Division of Consumer Affairs at the address on file with the Board shall be deemed adequate notice for the commencement of any inquiry or disciplinary proceeding.

13:42-10.3 Prohibition on unethical referrals

(a) A licensee shall not refer a client to a health care service in which the licensee has any financial or significant beneficial interest. This shall not prohibit professionally justified referral for treatment or services to an employed associate or another practitioner within the licensee's bona fide group practice or managed health care plan.

(b) A licensee shall not prescribe goods or devices which the licensee sells or leases to the client, except as follows:

i. The goods or devices are an integral part of the professional treatment for that client;

ii. The item and its fee (if any) are specified on the billing statement under the licensee's professional office name; and

iii. Any fee is set at a level which does not exceed a recoupment of the reasonable actual expense to the licensee for provision of the goods or devices. The burden of justifying the fee shall be on the licensee.

13:42-10.4 Professional responsibilities to the Board, other regulatory authorities, or the public

(a) Where not otherwise specified in this section, the term "licensee" includes holders of licenses and holders of temporary permits issued by the Board.

(b) A licensee shall meet professional responsibilities to the Board, to other regulatory authorities, and to the public as determined by accepted standards of practice, law or rules.

(c) A licensee shall respond within 30 days or sooner, as specified, to written communication from the Board, the Attorney General or the Director of the Division of Consumer Affairs and shall make available all records required with respect to a complaint from a client or as otherwise deemed necessary regarding the licensee's conduct. The response period commences on the date of the communication to the licensee's last reported address.

(d) A licensee shall maintain competence consistent with professional responsibilities, including the following:

1. A licensee shall remain abreast of standards of practice in the profession by means of securing continuing education such as training, experience or counsel and through professional journals;

2. A licensee-teacher shall base academic instruction primarily upon material the licensee reasonably believes to be accurate, current and scholarly;

3. A licensee shall obtain competent professional assistance in order to determine whether to voluntarily suspend, terminate or limit the scope of the licensee's professional and/or scientific activities which are foreseeably likely to lead to inadequate performance or harm to a client, colleague, student or research participant;

4. A licensee shall refuse to engage in or condone hiring, promotion or training practices that are inhumane or that result in illegal or otherwise unjustifiable discrimination on the basis of race, handicap, age, gender, sexual preference, religion or national origin; and

5. A licensee shall make reasonable use of professional, technical and administrative resources that best serve the interests of consumers. A psychologist is responsible for recognizing his or her areas of competence in the profession and when to refer appropriately to practitioners of related or other professions.

13:42-10.5 Maintaining competence in testing situations

(a) A licensee responsible for decisions involving individuals or policies based on test results shall have an understanding of psychological or educational measurement, validation problems, and other test research.

(b) A licensee responsible for development and standardization of psychological tests and other assessment techniques shall utilize established scientific procedures and observe relevant professional standards.

(c) When reporting test results, if fewer than the standard number of test components as designated by the test manual have been administered, a licensee shall indicate the reason for such deviation and shall note reservations or limitations regarding validity or reliability resulting from testing circumstances or the possible inappropriateness of the test norms for the person tested. A licensee shall take reasonable measures to ensure that the results of assessments and their interpretations are not misused by others.

(d) A licensee shall make reasonable efforts to avoid use of obsolete testing measures.

(e) A licensee offering test scoring and interpretation services shall be prepared to demonstrate that he or she is competent to

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understand the programs and procedures used in arriving at the interpretations. In this regard, a licensee's use of an automated test interpretation from a professionally recognized testing entity and the licensee's utilization of such interpretation shall remain confidential and shall be considered to be only one component of a psychological evaluation.

(f) A licensee shall not sponsor or supervise the use of psychological assessment techniques by persons who are not in an appropriate psychological or closely-related field or who are otherwise unqualified.

(g) A licensee shall administer or supervise the administration of all testing materials on premises and consistent with accepted standards of practice.

13:42-10.6 Research

(a) A licensee shall observe research requirements consistent with accepted standards of practice including, but not limited to, the following:

1. A licensee shall minimize the possibility that research findings will be misleading and shall not knowingly publish misleading or false findings;

2. A licensee shall provide thorough discussion of the limitations of the published data and alternative hypotheses, especially where the work touches on social policy or might reasonably be construed to the detriment of persons in specific age, sex, ethnic, socio-economic or other identifiable social groups;

3. A licensee shall reveal contrary or disconfirming data or acknowledge the existence of alternative hypotheses and explanations of the findings following reasonable and customary efforts at research of the topic;

4. A licensee shall acknowledge the authors of work in proportion to their professional contribution; and

5. A licensee shall treat research participants ethically and ensure ethical treatment of them by collaborators, assistants, students and employees.

13:42-10.7 Reporting of violations of other licensees

(a) A licensee is encouraged to address violations of law, rule or accepted standards of practice by other licensees of this Board. A licensee who discovers apparent violations by another licensee may attempt to rectify the situation informally or may confidentially notify the Board or a local, State or national professional society for follow-up.

(b) Notwithstanding the provision for voluntary reporting set forth in (a) above, a licensee shall promptly notify the Board when in possession of information which reasonably indicates that another licensee has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to a client or to the public health, safety or welfare.

(c) Notwithstanding the provisions of (b) above, when a licensee in the course of a professional therapeutic relationship with a client who is not a licensee of the Board obtains information from the client about another licensee's suspected unlawful conduct, the treating licensee shall report the information only with the written permission of the client.

(d) Notwithstanding the requirements of (b) above, a licensee who acquires knowledge of impairment, incompetence or unprofessional conduct in the course of treating a client-psychologist or an individual exempt from licensure pursuant to N.J.A.C. 13:42-1.3 and N.J.S.A. 45:14B-8 shall not be obligated to notify the Board if:

1. The treating psychologist reasonably believes that the improper conduct has ceased and that the treatment is preventing a recurrence of the impairment, incompetence or professional misconduct; or

2. The treating psychologist has reasonable cause to believe that the incompetent psychologist or exempt professional is currently receiving professional supervisory and educational measures which are reasonably likely to protect clients against gross incompetence.

(e) A licensee acquiring privileged information of drug or alcohol abuse in the course of treating a client-psychologist or exempt professional in a substance abuse treatment program governed by Federal law shall, as required by Federal law, first obtain authorization for release of such information from a court of competent jurisdiction or shall obtain the client's written consent to release the information.

(f) A licensee is not exempt from reporting any information otherwise mandated by law, such as, but not limited to, P.L.1974, c.119, reporting of an abused child as defined in N.J.S.A. 9:6-8.8 et seq.

13:42-10.8 Professional interactions with clients

(a) A licensee shall not abandon or neglect a client under and in need of professional care without making reasonable arrangements for the continuation of such care or offering to help the client find alternative sources of assistance.

(b) A licensee shall not abandon or neglect professional employment by a group practice, hospital clinic or other health care facility without reasonable notice or under circumstances which would be expected to seriously impair the delivery of professional care to clients.

(c) A licensee shall not exercise undue influence on the client including the promotion of services by the licensee or others.

(d) A licensee shall not willfully harass, abuse or intimidate a client regarding delivery of client services, either physically or verbally.

(e) A licensee shall not order excessive tests, treatment or use of treatment facilities not warranted by the condition of the client.

(f) A licensee shall terminate a clinical or consulting relationship when it is reasonably clear that the client is not benefiting from it. In such instances, the licensee shall offer to help the client find alternative sources of assistance.

(g) A licensee shall not participate in assessment and/or testing in which the client is not advised, in terms the client can understand, of the nature and purposes of the test and test results unless the client agrees in advance to have the test results released to a specified third party.

13:42-10.9 Sexual conduct

(a) A licensee shall not participate in a sexual relationship or engage in sexual intimacies with a current psychotherapy client, a former client to whom psychotherapy was rendered within the immediately preceding 24 months, a current student, a direct supervisee or supervisor, or a research participant.

(b) In circumstances where any of the persons listed in (a) above are, or should be recognized by the licensee as, clearly vulnerable by reason of emotional or cognitive disorder to exploitive influence by the licensee, the 24 month limitation set forth in (a) above shall not apply and the prohibition shall extend indefinitely.

(c) A licensee shall refrain from any sexual harassment which, for the purposes of this section, is defined as condoning or engaging in deliberate or repeated comments, contacts or gestures which are unrelated to professional instruction on the subject of harassment and which are sexually suggestive, seductive, demeaning or harassing.

(d) A licensee shall not accept as a client a former sexual partner.

(e) In the treatment of sexual dysfunction as well as in other areas of the practice of psychology, a licensee shall not engage in the following conduct, which is hereby defined as professional misconduct:

1. Physical contact of a sexual or deliberately hurtful nature between psychologist and client; or

2. In therapy groups, activities which promote or allow physical contact of a sexual or deliberately hurtful nature between group members.

13:42-10.10 Financial arrangements with clients and others

(a) Fees shall be reasonable and commensurate with the status and experience of the licensee when compared with fees of licensed psychologists in the geographic area and shall be consistent with the provisions of N.J.A.C. 13:42-10.11 prohibiting excessive fees.

(b) Fees for services rendered by a permit holder or an exempt professional practicing under supervision shall be reasonable and commensurate with the status and experience of the supervisee when compared with fees of licensed psychologists in the geographic area. The supervisor shall be responsible for justifying any fee charged in light of this requirement.

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(c) A licensee shall prepare and maintain a written list of current fees for standard services, which list shall be available to clients upon request. The licensee shall include all of the following information on the list:

1. Whether Medicaid clients are accepted;
2. Whether Medicare clients are accepted and, if so, if assignment is taken on all billings;
3. Whether other third party payor plans are accepted;
4. The extent to which insurance payment (excluding deductible) is accepted as payment in full; and
5. Whether special fee categories are available, such as senior citizens or members of designated groups (for example, preferred provider plan members).

(d) Before commencing the therapeutic relationship, a licensee shall assist clients to understand financial arrangements. The information provided to the client shall include, but not be limited to:

1. The fee for services or the basis for determining the fee to be charged, unless services are provided during an emergency or in other circumstances where opportunity, custom and practice preclude discussion prior to the rendering of services;
2. Whether the licensee will accept installment payments or assignment of benefits from a third party payor;
3. That insurance coverage may not be available in all circumstances; and
4. The financial consequences, if any, of missed sessions.

(e) Where payment of the usual fee would be a hardship, a licensee shall assist clients to find other sources for provision of the needed services. A licensee is encouraged, however, to make special accommodations in adjusting usual fees in appropriate cases.

(f) A licensee shall not enter into financial arrangements with clients which are likely to impair professional judgment. Improper financial arrangements shall include, but are not limited to, loans (whether borrower or lender) or assumption of liabilities for debt.

(g) A licensee shall not enter into a financial arrangement or other potentially exploitive relationship with a former client which is likely to be the product of judgment impaired by the former relationship.

13:42-10.11 Prohibition on excessive fees

(a) The Board may review information and complaints alleging excessive fees charged by Board licensees. This regulation is not intended to impinge upon the strong public policy in favor of a competitive, free enterprise economy embodied in the antitrust laws of the United States and of this State.

(b) A licensee shall not charge an excessive fee for services. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching in the circumstances.

(c) Factors which the Board may consider in determining whether a fee is excessive include, but are not limited to, the following:

1. The novelty and difficulty of the service or treatment;
2. The time and effort required;
3. The skill required to properly perform the procedure or treatment;
4. Any requirements or conditions imposed by the client or by the circumstances;
5. The nature and length of the professional relationship with the client;
6. The experience, reputation and ability of the licensee performing the services;
7. The nature and circumstances under which services are provided; and
8. Comparable fees charged by licensees not under inquiry.

(d) Charging an excessive fee in violation of the provisions of this section shall constitute professional misconduct subjecting the licensee to disciplinary sanction by the Board.

13:42-10.12 Billing

(a) The licensee's bill shall include at least the following information:

1. The licensee's name, license number, tax identification number and original signature;
2. The street address and telephone number of the practice location;
3. The dates and nature of professional services including, in connection with treatment, whether individual or group;
4. Diagnosis and insurance codes, if required or requested;
5. In a practice setting where services are provided by more than one practitioner, the name and license number of the licensee who provided the services being billed; and
6. Fees. The licensee shall identify which part, if any, of the services billed were provided by a technician at the direction of and under the supervision of the licensee pursuant to N.J.A.C. 13:42-7.3 and 7.4 and shall adjust the fee downward accordingly.

(b) A licensee billing for services rendered by a permit holder or an exempt professional practicing under supervision shall include all of the following information on the bill in addition to the information required pursuant to (a) above:

1. The name and permit number of supervisee;
2. The dates, if any, when the client was seen personally by the supervisor; and
3. A statement that treatment was rendered by the supervisee under the supervision of the supervisor.

13:42-10.13 Conflicts of interest

(a) A licensee shall not enter into or continue in any treating relationship in which he or she has any personal, financial or beneficial interest other than that arising from the usual therapist-client relationship.

(b) A licensee shall not enter into any relationship which a reasonable psychologist in similar circumstances would expect to limit objectivity, impair professional judgment or increase risk of exploitation. Examples of such relationships include, but are not limited to, professional treatment of employees, tenants, students, supervisees, close friends or relatives. Professional relationships other than for treatment purposes, such as research using such persons, should be governed by caution to avoid impropriety.

(c) A licensee, whether practicing privately or within an institution or agency utilizing psychological services, shall not condone distortion, misuse or suppression of psychological findings by the licensee or others.

(d) A licensee shall not condone misuse of a psychologist's influence or professional work.

(e) A licensee shall not exploit the client's trust and dependency.

(f) A licensee who has identified a conflict of interest shall notify the parties involved and shall take action to terminate the conflict.

13:42-10.14 Prohibition on kickbacks and rebates

(a) A licensee shall not pay, offer to pay or receive any fee or other form of compensation for referral of a client for professional services or for the purchase of goods. This subsection shall not prohibit a licensee from:

1. Paying a flat fee for regular advertising services;
2. Paying a flat fee for the licensee's placement on a commercially sponsored "referral list" of licensed health care providers; or
3. Contributing a fee to a professionally sponsored referral service for provision of low-cost psychotherapy to screened clients.

(b) A licensee shall not permit the division of fees for professional services other than among licensees engaged in a bona fide partnership or professional service corporation or employment relationship. A licensee shall not divide fees for professional services rendered to a client with a psychologist practicing as an independent contractor.

(c) This section shall be construed broadly to effectuate its remedial intent.

SUBCHAPTER 11. ACCESS TO TREATMENT INFORMATION IN DESIGNATED HEALTH INSURANCE PROGRAMS

13:42-11.1 Purpose and scope

(a) This subchapter implements the provisions of P.L. 1985, c.256 (N.J.S.A. 45:14B-31 et seq.), which limits the scope of and establishes

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procedures by which clients may authorize licensees to disclose confidential information upon the request of an insurer or other third-party payor.

(b) Any consent or agreement purporting to waive the provisions of P.L. 1985, c.256 or this subchapter shall be against public policy and void.

(c) The provisions of this subchapter shall not apply when access to client treatment records may be had by otherwise lawful methods, as set forth in N.J.A.C. 13:42-11.11.

(d) Nothing in this subchapter shall preclude an interested party, including a licensee, from:

1. Filing a complaint with the Board regarding the conduct of a licensee or of an independent professional review committee (IPRC) member;

2. Notifying the Board of an apparently improper demand for confidential information made upon a licensee by an insurance carrier or other third party; or

3. Notifying the Board of an apparently improper termination or threat to terminate third party benefits without compliance with P.L. 1985, c.256 and this subchapter.

13:42-11.2 Definitions

As used in this subchapter, the following words shall have the following meanings unless the context clearly indicates otherwise and except as otherwise expressly provided:

"Customary" means that range of usual practices provided by psychologists of similar education, experience and orientation within a similar geographic or socioeconomic area.

"Education" means completion of any of the educational programs and attainment of the attendant degrees that have qualified a person for licensure under the Act; that is, Ph.D., Ed.D., Psy.D. For the purposes of assigning reviewers of similar education to a given claim under review, the holders of any of these degrees shall be deemed equivalent.

"Experience" means one of the following areas of specialized practice: psychotherapy with adults and adolescents; psychotherapy with children; marital/family therapy; testing assessment.

"Orientation" means one of the following five theoretical positions: behavioral, humanistic/existential, psychoanalytic, systems or eclectic.

"Psychological services" means the provision of professional services which are founded upon psychological principles derived from a base of scientific knowledge and a recognized and accepted theory of clinical application; and used to promote the optimal development of an individual's potential or to ameliorate an individual's personality disturbances and maladjustment as manifested in personal and interpersonal situations. Psychological services shall be selected and rendered to clients based upon the treating psychologist's professional experience, knowledge of empirical and theoretical literature and professional guidelines and standards. Psychological services shall be necessary and appropriate in light of the client's circumstances, the diagnosis, the reasonableness of goals, and the adequacy of progress.

"Reasonable" means that there is a professionally acceptable probability that the client will realize a significant benefit from continuation of the psychological treatment.

"Stage I (Preliminary Disclosure)" means a request from a third party payor to obtain certain limited information about a client from the treating psychologist for the purpose of permitting the client to obtain or continue benefits from the third party payor for psychological services.

"Stage II Review" means a review conducted by an independent professional review committee (IPRC), established pursuant to N.J.S.A. 45:14B-44, for the purposes of determining whether the treatment is usual, customary or reasonable.

"Stage III Review" means a review conducted by the IPRC when the reviewers are unable to determine, based upon the information provided in Stage II, whether the treatment is usual, customary or reasonable.

"Stage IV Review" means a comprehensive review conducted by the IPRC when the reviewers are unable to determine, based upon the information provided in Stage III, whether the treatment is usual, customary or reasonable.

"Usual" means a practice in keeping with the licensee's general mode of operation.

13:42-11.3 Stage I (Preliminary Disclosure); required authorization

(a) When a licensee receives a request from a third party payor for information about psychological services rendered by the licensee, the licensee shall request a valid authorization from the client or other designated person.

(b) The licensee shall secure the authorization within 14 days of receiving the request from the third party payor, unless precluded from doing so by the circumstances of the case.

(c) The authorization shall be in writing and shall specify at least the following:

1. The nature of the information to be disclosed, the person authorized to disclose the information, to whom the information may be disclosed, the specific purposes for which the information may be used at the time of disclosure and at any future time;

2. That the client is aware of the statutory privilege for confidential communication between a client and a licensed psychologist; and

3. That the consent may be revoked in writing by the client at any time, if such notice is given to both the treating psychologist and the recipient named in the authorization.

(d) The authorization shall be signed and dated by the client or the person authorizing the disclosure. If the client is adjudicated incompetent or is deceased, the authorization shall be signed by the client's legally authorized representative. When the client is more than 14 years of age but has not yet reached age 18, the authorization shall be signed by the client and by the client's parent or legal guardian. When the client is less than 14 years of age, the authorization shall be signed only by the client's parent or legal guardian.

(e) The authorization shall apply only to information existing as of the date signed and is effective for one year only from the date signed.

(f) The licensee shall provide a copy of the authorization to the client or the person authorizing the disclosure.

13:42-11.4 Stage I: Information to be provided to the third party payor

(a) A Stage I inquiry does not involve the Independent Professional Review Committee (IPRC). The licensee shall provide the information set forth below directly to the third party payor.

(b) Within 10 days of receipt of the authorization required pursuant to N.J.A.C. 13:42-11.3, the treating psychologist shall provide the third party payor with basic client information limited to the following. The information provided shall be marked "Confidential" and forwarded to the attention of the specific individual designated in the authorization, if any.

1. Administrative information, defined as the client's name, age, sex, address, educational status, identifying number within the insurance program, date of onset of difficulty, date of initial consultation, dates and character of sessions (individual or group) and fees;

2. Diagnostic information, defined as therapeutic characterizations (including all five axes) of the type found in DSM III-R or the current version of the DSM or in another professionally recognized diagnostic manual;

3. Status of the client (voluntary or involuntary; inpatient or outpatient);

4. The reason for continuing psychological services, limited to an assessment of the client's current level of functional impairment and level of distress. Each aspect shall be described as "none," or by the term mild, moderate, severe or extreme; and

5. Prognosis, limited to an estimate of the minimal time during which treatment might continue.

13:42-11.5 Stages II, III and IV; Information to be provided to Independent Professional Review Committee

(a) The licensee shall notify the Board within 10 days of a request by a third party payor for a Stage II, III or IV review by the IPRC, established pursuant to N.J.S.A. 45:14B-44 and N.J.A.C. 13:42-11.6. The notification shall include the following information:

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1. The licensee's major theoretical orientation; that is, behavioral, humanistic/existential, psychoanalytic, systems or eclectic; and

2. The licensee's area of practice specialization; for example, psychotherapy with adults and adolescents, psychotherapy with children, marital/family therapy or testing/assessment.

(b) Within 10 days of the Board's receipt of the licensee's notification, the Board shall designate two or more members of the IPRC to serve as reviewers of the case and shall inform the licensee of their names and addresses.

(c) The licensee shall immediately provide, directly to the IPRC and not to the Board, the client's written authorization and shall disclose to the IPRC, in writing, confidential information concerning the client's treatment limited to the following:

1. For a Stage II review: The case identification number; status of the client; duration and frequency of treatment; diagnosis including all five Axes; prognosis (including minimal length of future treatment expressed in terms of identified goal(s)); the reason for continuing psychological services stated in terms of the various functions assessed; and professional judgment as to level of impairment and level of distress (each rated as none, mild, moderate, severe or extreme).

2. For a Stage III review: All of the information set forth in (c)1 above plus a written statement describing the licensee's customary mode of treatment for the particular diagnosis and for the client in question, within the context of the licensee's theoretical orientation.

3. For a Stage IV review: All of the information set forth in (c)1 and 2 above, details and circumstances concerning the case under review, and the entire client record for inspection by the reviewers.

(d) In the event a client declines to provide the authorizations required pursuant to P.L. 1985, c. 256 and N.J.A.C. 13:42-11.3, the review process shall not be undertaken pursuant to the IPRC process. The licensee shall so notify the third party payor and any assigned reviewers.

(e) Absent good cause shown, failure of the licensee to comply with any of the provisions of P.L. 1985, c.256 or this subchapter shall subject the licensee to any of the disciplinary sanctions authorized by law. Good cause shall include, but not be limited to, taking vacations of reasonable length, illness, serious family problems, or not receiving daily mail deliveries if there is more than one practice location.

13:42-11.6 Independent Professional Review Committee; responsibilities of the Board

(a) The Board shall appoint IPRC members from a pool of volunteer licensed psychologists who are screened and trained by the Board. The Board shall appoint to the IPRC, for a three-year term, licensees who demonstrate that they are:

1. Licensed in New Jersey for the five years immediately preceding appointment;

2. Active practitioners with a current minimum average of 10 hours per week of direct service in the areas of service they are authorized to review; for example, psychotherapy with adults and adolescents; psychotherapy with children; marital/family therapy; testing/assessment; and

3. Respected and known by their professional colleagues for the quality of their clinical work and exemplary professional conduct.

(b) The IPRC Administrator shall, within 10 days of receipt of notification from a licensee or a request by a third party payor for a Stage II review, designate two members of the IPRC to conduct the review and notify the treating psychologist of the assignment of reviewers.

(c) To the extent practicable, reviewers designated for case review shall be knowledgeable in the orientation used by the treating psychologist and the customary practices of that orientation.

13:42-11.7 Stage II review by Independent Professional Review Committee

(a) The reviewers shall examine the material submitted by the treating psychologist as specified in N.J.A.C. 13:42-11.5(c), as well as any material made available by the third party payor, including, but not limited to, billing statements, treating doctor reports and claim forms, and the report of an independent examining practitioner, if any.

(b) Each reviewer shall make an independent assessment of the material provided to determine, on the basis of the limited information provided, whether the psychological services for which payment is claimed are usual, customary or reasonable.

(c) Each reviewer shall confer with the other designated reviewer to ascertain whether there is agreement on the finding.

(d) If, on the basis of the information provided, the reviewers can certify that the treatment is usual, customary or reasonable, the reviewers shall so notify the third party payor and the Board, and no further review shall be undertaken by the IPRC.

(e) If the two reviewers are unable to agree that services are usual, customary or reasonable, or if they both agree that the services are not; or if both reviewers find the information provided to be insufficient to reach a conclusion, the reviewers shall proceed to Stage III and shall so notify the Board and the treating psychologist.

13:42-11.8 Stage III Review by Independent Professional Review Committee

(a) The two designated reviewers shall request the treating psychologist to provide a written statement describing his or her customary mode of treatment for the particular diagnosis and for the client in question, within the context of the psychologist's theoretical orientation.

(b) If, on the basis of the information provided, the reviewers can certify that the treatment is usual, customary or reasonable, the reviewers shall so notify the third party payor and the Board, and no further review shall be undertaken by the IPRC.

(c) If the two reviewers are unable to agree that the treatment is usual, customary or reasonable, or if they both agree that the services are not usual, customary or reasonable, or if one or both reviewers find the information provided to be insufficient to reach such a conclusion, the reviewers shall proceed to Stage IV and shall so notify the Board and the treating psychologist.

13:42-11.9 Stage IV review by Independent Professional Review Committee

(a) In a Stage IV review, the Board shall appoint a third reviewer.

(b) The reviewers shall request the treating psychologist to provide details and circumstances concerning the case under review. The reviewers shall request production of the original client record including session notes, test data and results, etc.

(c) On the basis of the information provided, the reviewers shall then certify to the third party payor and the Board their conclusion as to whether the treatment is usual, customary or reasonable. The conclusion of a majority of the three-person IPRC shall be reported as the conclusion of the Committee.

(d) The reviewers shall certify to the third party payor the date and length of time of their consultation in reviewing the case.

13:42-11.10 Independent Professional Review Committee; responsibilities of reviewers

(a) IPRC reviewers shall complete the entire review process, that is, Stages II, III (if necessary) and IV (if necessary), within 20 days of their receipt of the review request by the Board. The Board shall interpret the timeframe to be exclusive of days lost as a result of injury or extenuating personal circumstances. The reviewers shall inform the Board or arrange for another to do so when such unforeseen event prevents the timely completion of a review assignment. The Board shall, in that event, attempt to appoint a substitute reviewer to complete the assignment.

(b) A reviewer shall treat all information provided by the treating psychologist as confidential and shall not disclose the information to the third party payor or to any private person.

(c) Upon termination of a reviewer's practice, the reviewer or his or her designee shall transfer all IPRC records to the IPRC office.

(d) A reviewer who believes that the information disclosed in the review raises a substantial possibility that a psychologist has engaged in any act or practice declared unlawful by a statute, regulation or accepted standard of practice of the Board shall make a report to the Board, which may conduct its own inquiry.

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13:42-11.11 Independent Board investigation

(a) The Board may conduct its own inquiry into a matter pursuant to N.J.S.A. 45:1-18, notwithstanding prior consideration by the IPRC, in the following circumstances:

1. The Board is requested by the third party payor, acting in good faith, to conduct an independent investigation of a matter; and

2. The third party payor's request sets forth specific grounds for questioning the IPRC results.

(b) The Board, at its discretion, may require the IPRC to provide to the Board the complete file of the review team for investigative purposes.

(c) Independent investigation by the Board shall not preclude any available right of the reviewer to judicial review pursuant to N.J.S.A. 45:15B-34(d).

13:42-11.12 Circumstances in which IPRC process is not required

(a) The IPRC process is not required for otherwise lawful methods of access to client treatment records in the following circumstances:

1. The client, vis-a-vis another person or a third party payor, has placed his or her mental condition in issue in a litigation context, and the client has consented to release of records of the treating psychologist;

2. The treating psychologist has been requested to provide information regarding underlying claims for damages or for reimbursement of professional fees, as authorized or directed by the Rules of Court or by order of a court of competent jurisdiction (not the mere service of an attorney's subpoena for discovery in litigation);

3. The third party payor has requested, pursuant to applicable laws, inspection of the client record and/or preparation by the licensee of a written report; that is, the Personal Injury Protection Program established by P.L. 1972, c.70, N.J.S.A. 39:6A-13(b) and (e), as amended or superseded, with regard to injuries resulting from motor vehicle accidents;

4. A third party payor has directed the client-insured to submit to mental or physical examination by an appropriate practitioner who prepares and submits findings and conclusions, pursuant to N.J.S.A. 39:6A-13(d), (e), (f);

5. A hospital, nursing home or other similar licensed health care institution has requested the licensee to provide existing client records of an inpatient for the purpose of ongoing evaluation;

6. A third party payor has requested access to hospital records, to the extent permitted by hospital rules governing the release of client records and/or mental health records in particular; or

7. The Board or the Attorney General has subpoenaed a complete copy of treatment records for the purpose of determining whether the conduct of a Board licensee conforms to accepted standards of practice.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF SHORTHAND REPORTING

State Board of Shorthand Reporting Rules

Proposed Readoption with Amendments: N.J.A.C. 13:43

Proposed Repeal: N.J.A.C. 13:43-2

Authorized By: State Board of Shorthand Reporting, Charles Tramer, Jr., Chairman.

Authority: N.J.S.A. 45:15B-1.

Proposal Number: PRN 1993-393.

Submit written comments by August 18, 1993 to:
John J. Meade, Executive Director
State Board of Shorthand Reporting
Post Office Box 45019
Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:43 is scheduled to expire on September 1, 1993. The current rules were initially promulgated prior to September 1, 1969 in order to implement the provisions of the Shorthand Reporting Licensing Act ("the Act"), N.J.S.A. 45:15B-1 et seq. The Act requires the State Board of Shorthand Reporting to regulate the practice of shorthand reporting and to provide for the licensing of persons to engage in the practice.

The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of the shorthand reporting profession by enabling the Board to have in place procedures which serve and protect the public's best interests. In compliance with the Executive Order, the Board has reviewed these rules and has determined, for the reasons set forth more specifically below, that some amendments are necessary. As amended, the rules continue to be necessary, reasonable and proper for the purposes for which they were originally intended.

Following is a brief summary of each of the four subchapters of N.J.A.C. 13:43. The summary includes a description of the amendments to each subchapter and the rationale therefore.

Subchapter 1, entitled Methods of Operation, describes the composition and duties of the Board and sets forth the Board's address. Proposed amendments to N.J.A.C. 13:43-1.1(a) and (b) correct the citation to the Act, which was recodified in 1977. An additional amendment is proposed to subsection (b) in order to reference the Uniform Enforcement Act. Amendments to N.J.A.C. 13:43-1.1 reflect the current statutory makeup of the Board, and amendments to N.J.A.C. 13:43-1.2 provide the titles assigned to Board officers by statute.

Subchapter 2 details administrative hearing procedures. With the exception of N.J.A.C. 13:43-2.9 and 2.21 (which have been recodified as N.J.A.C. 13:43-3.7 and 3.8), this subchapter is being repealed in its entirety. The Board finds the rules to be unnecessary as the subject matter of many of the rules is included in and clearly and obviously inferable from the Board's enabling statute, N.J.S.A. 45:15B-1 et seq.; the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; and the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq.

Subchapter 3, entitled General Provisions, details general rules of practice and currently consists of five sections. The Board is proposing to add three sections to this subchapter, as hereinafter described.

N.J.A.C. 13:43-3.1(a) sets forth rules concerning examination and certification. In addition to minor clarifications, the Board is proposing to add a new subparagraph (a)2ii to formalize existing Board policy by identifying the documentation required to be submitted with the application for examination. In subparagraph (a)5i, the word "courtroom" has been changed to "reporting" to reflect that a licensee may practice at a site other than a courtroom, and the minimum dictating speed at which the exam will be given has been changed from 175 words per minute to 180 to make New Jersey's requirement consistent with national testing standards for shorthand reporters. In subparagraphs (a)5ii and iii, amendments are proposed to reflect the manner in which the Board currently administers the examination; that is, all and not merely a part of the dictated material must be transcribed; the Board may approve methods of transcription other than the typewriter; and the Board does not always require dictated material to be read aloud. The Board has found that it may be impractical to have dictated material read aloud, particularly when it is under time constraints because of increasing numbers of licensure candidates. Amendments are proposed to paragraph (a)6 for clarification purposes and to accurately set forth the content of the examination. Reference to the fluency with which the candidate reads his or her notes aloud has been deleted because, as stated, the Board may not always require the candidate to read dictated material aloud.

N.J.A.C. 13:43-3.1(b) provides for licensure by endorsement for shorthand reporters certified in another state or jurisdiction which has requirements equivalent to, or higher than, those of this Board. The Board has never had occasion to issue a license without examination to a candidate certified in another state because no application presented has met the criteria of this subsection. Accordingly, the Board is replacing this route to licensure with proposed new N.J.A.C. 13:43-3.6, which exempts holders of a National Certificate of Merit from testing requirements. N.J.A.C. 13:43-3.1(b) is, therefore, proposed to be deleted.

N.J.A.C. 13:43-3.2 details unprofessional conduct with regard to promotion of shorthand services.

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N.J.A.C. 13:43-3.3 includes rules for the proper and required identification of Board licensees as well as persons not certified in this State.

N.J.A.C. 13:43-3.4 permits conditional credit for a candidate who passes two of the three sections of the examination, provided a grade of at least 95 percent is attained for the two sections passed and a grade of not lower than 93 is attained on the remaining section. The requirement as to forfeiture of conditional credit has been amended to permit an applicant to petition the Board to retain conditional credit for longer than six examinations in extenuating circumstances.

N.J.A.C. 13:43-3.5 requires licensees to notify the Board in writing of any address change. To assist the Board in locating licensees, the proposed amendment would require the licensee to notify the Board of a name change as well.

Proposed new N.J.A.C. 13:43-3.6 would exempt holders of a National Certificate of Merit, awarded by the National Court Reporters Association, from the Board's examination requirement. The qualifying examination for this certificate consists of both a written test and a three-part practical examination with dictation of literary material at 200 words per minute, a jury charge at 240 words per minute, and a two-voice question and answer at 260 words per minute. The Board believes the rigorous nature of this examination qualifies National Merit Certificate holders for exemption from the examination administered by the Board.

Proposed new N.J.A.C. 13:43-3.7 and 3.8 were previously codified at N.J.A.C. 13:43-2.9 and 2.21. N.J.A.C. 13:43-3.7 provides that all hearings must conform to the requirement of 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. N.J.A.C. 13:43-3.8 provides that if any rule or its application becomes invalid or loses its force and effect, the remainder of these rules shall not be affected or impaired.

Subchapter 4 contains the Board's fee schedule. Amendments to this subchapter were adopted effective July 6, 1992 (see 24 N.J.R. 2460(b)), and no changes are proposed at this time.

Social Impact

The rules proposed for readoption provide various procedures for the orderly administration of the Board's operations and the conduct of examinations in order to ensure that truly qualified individuals are certified to practice as shorthand reporters. The best interests of the public, the courts, the legal profession and municipal, county and other governmental agencies have been well served through the Board's efforts to maintain a high level of professionalism. The Board anticipates that the readoption of the existing regulations, as amended, will have an advantageous social impact upon all parties in that these high standards will be maintained.

The repeal of subchapter 2 will have no impact upon any party as the content of this subchapter may easily be found elsewhere and need not be repeated here.

In subchapter 3, the proposed amendment to N.J.A.C. 13:43-3.1(a)5i increasing minimum examination dictating speed from 175 words per minute to 180 words per minute will assure the consumer that all licensees meet current national standards. Deletion of endorsement provisions in N.J.A.C. 13:43-3.1(b) will have no impact since licensure by endorsement cannot currently be accomplished.

The amendment to N.J.A.C. 13:43-3.4 will allow an applicant to petition the Board to retain conditional credit for longer than six examinations in extenuating circumstances. The proposed amendment to N.J.A.C. 13:43-3.5 requiring licensees to report a name change in addition to an address change will assist the Board in locating licensees. Holders of a National Certificate of Merit will benefit from proposed new N.J.A.C. 13:43-3.6 which provides an exemption from the Board's examination for these certificate holders. The Board is of the opinion that completion of the rigorous examination process required of certificate holders amply demonstrates professional competence, and therefore there should be no adverse impact upon consumers of shorthand reporting services.

The remaining proposed amendments to both subchapters 1 and 3 will benefit licensees in that they clarify existing regulations and codify and clarify Board policy and examination administration procedures and requirements.

Economic Impact

The proposed readoption of the fee schedule will obviously have an impact upon the professional. However, since the fee schedule is proposed for readoption without change, the readoption does not increase the economic burden upon the licensee. It should be noted that pursuant to N.J.S.A. 45:1-3.2, all professional licensing and occupational boards are required to be self-funding; that is, operating costs must be met through licensing and other fees. Since funding of the Board operation is attained by the fee structure now in place, failure to readopt would place the Board's operation in jeopardy.

Licensees will also incur examination application expenses, such as certified check or money order fees and any fees involved in obtaining a certification from the school attended of having passed a qualifying test. However, no changes have been proposed upon readoption which would increase the economic burden upon the licensee; the addition of the certification requirement merely codifies an existing Board documentation requirement. A licensee who changes his or her name may incur a nominal expense in reporting the name change to the Board.

Finally, individuals who have been awarded a National Certificate of Merit by the National Court Reporters Association will not be required to take the Board examination and thus will save the Board examination fee.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required to the extent the rules proposed for readoption apply to individual applicants for examination and certification, since these individuals would not be considered "small businesses" under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. To the extent that individual practicing shorthand reporters are considered to be small businesses under the Act, the following analysis applies.

The Board of Shorthand Reporting currently licenses 1,172 individuals. The specific number of small businesses is impossible to determine, since the Board licenses individuals and not entities. Compliance requirements include disclosure of the licensee's title and license number on all official documents; reporting any change in name or address to the Board within 30 days following such change; and submitting a biennial renewal form together with required fees in a timely manner. Professional services are not required in order to comply with these requirements. Because the rules in this subchapter serve to protect the general public and consumers of shorthand reporting services, no exemption from the rules based upon business size is feasible.

Full text of the proposed readoption and repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:43 and 13:43-2, respectively.

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

13:43-1.1 State Board of Shorthand Reporting; description

(a) The Board of Shorthand Reporting created in the Division of Consumer Affairs of the Department of Law and Safety, pursuant to N.J.S.A. [45:15A-1] **45:15B-1** et seq., consists of [five] **six** members appointed by the Governor, three of whom are certified shorthand reporters, [one] **two** of whom [is] **are** appointed by the Governor as public members, and the [fifth] **sixth** being a member of the executive branch of government.

(b) The State Board of Shorthand Reporting is charged with the responsibility to license certified shorthand reporters and to punish persons violating provisions of the Shorthand Reporting Act, N.J.S.A. [45:15A-1] **45:15B-1** et seq., **pursuant to the provisions of the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq.**

13:43-1.2 Methods of operation

(a) The State Board of Shorthand Reporting elects, from its number, a [president] **chairman and a secretary/treasurer** to preside over its activities and to assume those duties normally associated with [that office; a secretary to record minutes and to assume those duties normally associated with that office; and a treasurer to assume those duties normally associated with that office] **those offices**.

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

13:43-3.1 Certification; examination

(a) Rules concerning examination and certification are:

1. (No change.)

2. An applicant for initial examination shall make written application under oath on the form furnished by the board. Such application must be filed with the [secretary-treasurer of the] board not less than three weeks before the announced date of examination and must be accompanied by a certified check or money order made payable to "State of New Jersey, Board of Shorthand Report-

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ing", **and a certification from the school of shorthand reporting attended of having passed a qualifying test of four-voice dictation at 225 words per minute, together with test papers and stenographic notes.** If the board determines that an applicant is not qualified to take the examination it shall notify [him] **the applicant** of that fact. Note: Fees are not refundable.

3.-4. (No change.)

5. Examinations shall be held at least once each year at such times and places as may be necessary in the opinion of the board, providing sufficient applications are on file with the board. The time and place of holding an examination shall be advertised by the board at least 30 days prior to the date of such examination.

i. Candidates shall be required to take an examination in shorthand reporting in the form prescribed by the board and shall be required to write shorthand from dictation, of such matter as may be selected by the board, under simulated [courtroom] **reporting** conditions at [a speed] **speeds** ranging from [175] **180** to 225 words a minute. Candidates may write shorthand with either pen, pencil or stenotype machine.

ii. Candidates shall be required to transcribe [such part of] the dictated matter [as the board shall indicate]. Such transcription shall be done by each candidate on a typewriter furnished by the candidate **or in such other manner as may be approved by the Board.**

iii. Candidates [shall] **may** be required to read aloud such part of the dictated matter as the board may require **upon prior notice to the candidates.**

iv.-vi. (No change.)

6. Grading:

i. The board shall grade each candidate's examination paper on the basis of [his ability to transcribe accurately his notes, the time occupied in the transcription, the accuracy and fluency with which he is able to read his notes orally, if so required, his knowledge of court reporting procedure, its related terminology, spelling, punctuation, and the general style of the transcript] **the candidate's ability to accurately transcribe notes, the time occupied in the transcription, accuracy relating to terminology, spelling and punctuation, and the general style of the transcript.**

ii.-iii. (No change.)

[(b) Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to the rules of the board for certification as a shorthand reporter, the Board may issue certificates of endorsement to applicants therefor who hold current, unsuspended or unrevoked certificates as certified shorthand reporters in such other state or jurisdiction. An applicant for certificate of endorsement must meet all requirements of N.J.A.C. 13:43-3.1(a)4, but shall not be required to submit to the examination required by N.J.A.C. 13:43-3.1(a)5. The fee for an initial certificate of endorsement shall be the same as the fee for an initial examination. An individual certified by endorsement shall be subject to all requirements of N.J.S.A. 45:15A-1 et seq.]

13:43-3.4 Conditional credit rule

(a) (No change.)

(b) In the event that a candidate fails to receive a passing grade in the one remaining section for six examinations immediately following the examination at which conditional credit was earned, the candidate shall forfeit the conditional credit and shall revert to the status of a new applicant, **unless the candidate can demonstrate good cause why he or she should be given an additional opportunity to pass the remaining section.**

13:43-3.5 Change of address

A licensee of the Board of Shorthand Reporting shall notify the Board in writing of any change of **name or** address from that currently registered with the Board and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of address.

13:43-3.6 Licensure without examination

An applicant for licensure who presents proof of having earned the National Certificate of Merit awarded by the National Court Reporters Association shall be deemed to have satisfied the examination requirement set forth in N.J.A.C. 13:43-3.1(a)5.

13:43-3.7 Hearing to conform to law

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:43-3.8 Validity of rules if any portion declared invalid

If any rule, sentence, paragraph or section of these rules, or the application thereof to any persons or circumstances, shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF SOCIAL WORK EXAMINERS
State Board of Social Work Examiners Rules
Proposed New Rules: N.J.A.C. 13:44G-1 through 5, 7 and 8

Authorized By: State Board of Social Work Examiners, Joseph P. Bordo, President.

Authority: N.J.S.A. 45:15BB-11(e).

Proposal Number: PRN 1993-396.

The Board will conduct **a public hearing** on Wednesday, August 4, 1993 between the hours of 4:00 P.M. and 8:00 P.M. in the Ballroom of the War Memorial Building, West Lafayette Street, Trenton, New Jersey. Persons wishing to speak at the hearing should submit a brief synopsis of the proposed statement or identify the topic about which they will speak so that the Board may determine the sequence and identity of speakers who will provide it with relevant, non-cumulative comments and data. Presentations will be limited to five minutes.

Submit written comments by August 18, 1993 to:

Leslie Aronson, Executive Director
State Board of Social Work Examiners
Post Office Box 45033
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Social Workers' Licensing Act of 1991, P.L. 1991, c.134 (N.J.S.A. 45:15BB-1 et seq.) (the "Act"), established qualification, education, training and experience standards for persons seeking to practice as social workers and required all individuals engaged in the practice of social work, except those specifially exempt, to be licensed or certified under the Act.

The Legislature found that the profession of social work profoundly affects the lives of the people of New Jersey and mandated the Board of Social Work Examiners to establish standards of professional performance for the protection of the public and to adopt rules and regulations to enforce the provisions of the Act.

On March 31, 1993, members of the Board met with representatives from over 20 social work associations and organizations in order to discuss a preliminary draft of proposed regulations. The within proposed new rules establish eligibility criteria and application procedures, to be codified at N.J.A.C. 13:44G, and address some of the concerns raised at the March 31, 1993 meeting. The Board is developing professional standards regulations to be proposed in a future issue of the New Jersey Register. A fee schedule at N.J.A.C. 13:44G-14.1 was recently proposed and adopted (see 24 N.J.R. 2523(a) and 25 N.J.R. 191(a)).

Subchapter 1 describes the purpose and scope of the rules and defines clinical social work services and social work services. This subchapter also outlines persons requiring licensure by reference to the scopes of practice of the three categories of licensure and certification: licensed clinical social worker; licensed social worker; and certified social worker. The Act exempts numerous individuals from the licensing and certification requirements, including other licensed professionals such as physicians, psychologists, marriage counselors, physical therapists, nurses, al-

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cohol or drug abuse counselors, and civil service employees in the course of their employment. The Board has chosen, however, not to reiterate these and other statutory exemptions from the Act, see N.J.S.A. 45:15BB-5.

Subchapter 2 describes Board organization.

Subchapter 3 sets forth the scope of practice for each social work category. Pursuant to N.J.S.A. 45:15BB-4(d), licensed social workers may practice clinical social work only under the supervision of a licensed clinical social worker. The Board recognizes the inherent tension between this practice limitation and the provisions of N.J.S.A. 45:15BB-6(a)2 that allow persons to acquire clinical social work experience under the supervision of a licensed social worker, an individual eligible for licensure or any other supervisor deemed acceptable to the Board. Accordingly, the Board has determined that for a three-year period following adoption of these rules it will allow persons other than licensed clinical social workers, including psychologists and psychiatrists licensed in this State, to provide clinical supervision consistent with the standards set forth in N.J.A.C. 13:44G-8.1. Acceptable supervisors will be required to possess the qualifications, training and experience which will permit the safe, effective and complete supervision of licensed social workers rendering clinical social work services in this State. During the three-year transition period, the Board intends to analyze supervision requirements to determine how best to resolve the tension inherent in the statute regarding supervision of licensed social workers.

An outline of the licensure and certification eligibility requirements set forth in subchapter 4 follows:

(a) Eligibility requirements—licensed clinical social worker:

1. A master's or doctorate degree in social work including 12 semester hours of course work in methods of clinical social work practice, exclusive of field placement;

2. Two years of supervised full time clinical social work experience. The equivalent of two years of full time social work experience is 1,920 hours. That figure is based upon 20 hours of supervised face-to-face client contact per week over the two-year period and is intended to assess the psychotherapeutic counseling experience required to obtain a clinical license. The Board has interpreted the statute to permit the 1,920 hours to be acquired over a three consecutive year period. The minimum number of hours of direct client contact per week under this interpretation would be 13.5. The three-year time frame is intended to provide a certain degree of flexibility to the applicant in demonstrating the acquisition of two years of full time clinical social work experience. The Board has interpreted the legislation to require the full time experience to be a concentration of experience acquired under responsible supervision rather than intermittent clinical practice. Because many applicants may have worked less than full time due to family or other considerations, the Board, in keeping with the spirit and intent of the law with regard to minimum qualifications, has provided for some latitude in the demonstration of the practice requirement; and

3. Successful completion of the American Association of State Social Work Boards ("AASSWB") clinical examination, unless the individual is exempt pursuant to N.J.A.C. 13:44G-5.1.

(b) Eligibility requirements—licensed social worker:

1. A master's or doctorate degree in social work; and

2. Successful completion of the AASSWB intermediate examination, unless the individual is exempt pursuant to N.J.A.C. 13:44G-5.2.

(c) Eligibility requirements—certified social worker:

A baccalaureate degree in social work, unless the individual is exempt from this requirement pursuant to N.J.A.C. 13:44G-5.3.

Subchapter 5 includes the following "grandfather" provisions which, pursuant to the Act, will be in effect only during the six-month period subsequent to the establishment of application procedures by the Board.

(a) Licensed clinical social worker:

1. Pursuant to N.J.S.A. 45:15BB-8(a), individuals who engaged in full time clinical social work for three of the five years immediately preceding May 6, 1991 (the enactment date of the Act) may apply for licensure without examination provided they also meet the requirements of paragraph 2 below. The equivalent of three years of full time clinical social work experience is 2,880 hours of direct client contact or rendering clinical supervision.

The Board has defined "full time clinical social work" for the purposes of this subchapter to include rendering clinical supervision. Eligibility will be limited to supervisors who, during the period May 6, 1986 to May 5, 1991, supervised clinical social workers providing direct client services. The Board has interpreted the statute to permit the required 2,880 hours to be acquired at any time during the five-year period. Under this interpretation, an applicant may demonstrate the acquisition of between 12 and 20 hours per week of direct client contact or the rendering of clinical supervision, or a combination of both, during the five-year period. The Board recognizes that actual clinical social work experience will exceed the required 2,880 hours as the clinical social worker will necessarily engage in such other activities as research, client session preparation, client recordkeeping and receiving supervision.

2. The statute requires applicants for clinical licensure under the grandfather provision to document—in addition to the 2,880 hours of experience—the educational and experiential requirements set forth in the Act, including two years of full-time, supervised clinical social work experience (or 1,920 hours over any three consecutive year period). See N.J.S.A. 45:15BB-8(a). It is important to note that, unlike the 2,880 hours required for the grandfathering phase, this 1,920 hours of experience must have been obtained under supervision, as outlined in subchapter 8 of this Chapter. If the 1,920 hours of supervised experience were obtained prior to May 6, 1986, the applicant for grandfathering must also document the 2,880 hours required above. If obtained under appropriate supervision during the period May 6, 1986 to May 5, 1991 the 1,920 hours need not be in addition to the 2,880 hours.

(b) Licensed social worker:

Individuals who have a master's degree and who have engaged in full time social work for three of the five years immediately preceding May 6, 1991 may apply for licensure without examination. The Board has determined the equivalent of three years of full-time social work to be 4,800 hours, which hours must have been acquired during the five-year period. Under this interpretation, an applicant may demonstrate acquisition of the required experience by demonstrating between 20 and 33 hours of social work experience per week over the five-year period.

(c) Certified social worker:

In recognition of the numbers of social work professionals who may not have attained the educational requirements set forth in the Social Workers Licensing Act but who have performed ably prior to enactment of the Act, the Legislature has permitted social workers with two years of experience or the equivalent to qualify for certification during the six-month period following promulgation of these rules. The proposed rules implement this statutory provision by permitting individuals who have engaged in full time social work for two of the five years immediately preceding May 6, 1991 to apply for certification without a baccalaureate degree. The Board has determined the equivalent of two years of full time social work to be 3,200 hours, which hours must have been acquired within the five-year period. Under this interpretation, an applicant may demonstrate acquisition of the required experience by demonstrating between 13.5 and 33 hours of social work experience per week over the five-year period. At the conclusion of this six-month "grandfather" phase, applicants for certification must present proof of a baccalaureate degree in social work, as set forth in N.J.A.C. 13:44G-4.3. Subchapter 5 also sets forth conditions for exemption from the examination requirements for applicants who hold a license or certification in another jurisdiction and who otherwise meet all educational and experiential requirements. As part of the application process, the Board will provide further and detailed guidance to applicants concerning calculation and documentation of eligibility requirements under both subchapters 4 and 5.

Subchapter 6 has been reserved for future use.

Subchapter 7 sets forth procedures and requirements for biennial license renewal and reinstatement. Continuing education requirements, which the Board anticipates will be a condition of biennial license renewal, are currently being formulated by the Board and will be proposed in a future issue of the New Jersey Register.

Subchapter 8 details clinical supervision standards. Additional rules regarding standards of practice will be forthcoming.

Social Impact

The proposed new rules will enable the State Board of Social Work Examiners to fulfill its statutory obligation to establish procedures for licensing and certifying social workers. Proposed subchapter 8, Clinical Supervision, will enable the Board to comply with the statutory requirement to set professional practice standards for licensed clinical social workers. Additional practice standards will be forthcoming.

Regulatory authority over social workers will protect the public by ensuring that social work services are rendered by competent individuals who have the knowledge and skills appropriate to a specific role, field of practice, population group or problem area. Furthermore, the public will be shielded from being misled by incompetent or unauthorized

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persons and from unprofessional conduct on the part of licensed or certified social workers. The proposed clinical supervision standards as well as the requirement that clinical social workers complete 12 semester hours of specific course work in methods of clinical social work practice, will ensure that clinical social work practitioners have the knowledge and skills necessary to engage in the independent practice of social work.

Licensees will benefit from the proposed new rules in that they will have a clear and comprehensive set of rules setting forth licensing and certification requirements and procedures.

Economic Impact

The proposed new rules will have an economic impact on the approximately 12,000 individuals expected to apply for licensure or certification. The notice of proposal for the Board's recently adopted fee schedule addressed the economic impact of licensing and certification fees upon these individuals, and that analysis need not be repeated here. The proposed new rules are not expected to result in significant additional costs to social workers as for the most part they merely reflect statutory educational, examination and experiential requirements. The proposed minimum course requirements for applicants for clinical licensure, established by the Board by these rules, are based upon current educational standards and thus should not require applicants to incur the economic expense of additional course work.

Documentation of these requirements—obtaining and filing with the Board official transcripts, proof of successful completion of the required examination, and supervisors' certifications or affidavits in lieu thereof—should result in only minimum additional expenses for applicants. Similarly, the proposed clinical supervision standards reflect current professional standards and thus should not result in increased costs for either the supervisor or the social worker.

The proposed new rules do not impose direct costs upon the public or the social work client. While the Board cannot estimate with any certainty whether the expenses created by these rules will be passed on to the public or the social work client as a cost of doing business, the Board points out that any adverse economic impact upon the public should be more than outweighed by the increased consumer protection these rules provide.

Regulatory Flexibility Analysis

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

The proposed new rules place compliance requirements upon applicants to document the statutory educational, examination and experiential requirements. These individuals must submit transcripts from educational institutions, proof of completion of the Board-approved examination and certifications attesting to social work experience. Compliance costs are expected to be minimal. Licensed social workers seeking clinical licensure must ensure that they are supervised in accordance with the requirements set forth in subchapter 8, which include regular review of the social worker's professional work and at least one hour of face-to-face individual supervision per week. No additional costs should be associated with these requirements as they represent current professional standards.

Since the proposed rules are intended to safeguard the public health, safety and welfare, they must apply to all Board licensees, without differentiation as to size of practice.

Full text of the proposed new rules follows:

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:44G-1.1 Purpose and scope

(a) The rules contained in this chapter implement the provisions of the Social Workers' Licensing Act of 1991, P.L. 1991, c.134, and regulate the profession of social work within the State of New Jersey.

(b) Except as set forth in (c) below, this chapter shall apply to all individuals who render clinical social work services and social work services, as hereinafter defined, and to anyone within the jurisdiction of the Board of Social Work Examiners.

(c) This chapter shall not apply to those individuals exempt from the provisions of the Act pursuant to N.J.S.A. 45:15BB-5, including an individual acting within the scope of a profession or occupation licensed by this State and doing work of a nature consistent with the person's training, as long as the person does not hold himself or herself out to the public as possessing a license or certificate issued pursuant to the Act.

13:44G-1.2 Definitions

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

"Clinical social work" means the professional application of social work methods and values in the assessment and psychotherapeutic counseling of individuals, families, or groups.

"Clinical social work services" mean social work services which may be performed only by a licensed clinical social worker or a licensed social worker under supervision pursuant to N.J.A.C. 13:44G-8. Clinical social work services include, but are not limited to, the following:

1. Clinical assessment, defined as the process of evaluation in which a licensed clinical social worker or a licensed social worker conducts a differential, individualized and accurate identification of the psycho-social/behavioral problems existing in the life of the individual client, the family or group for the purpose of establishing a plan to implement a course of psychotherapeutic counseling. A clinical social work assessment includes, but is not limited to, a mental status examination and a psycho-social history. The clinical social worker may utilize currently accepted diagnostic classifications including, but not limited to, the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised (DSM-III-R), as amended and supplemented.

2. Clinical consultation, defined as ongoing case discussion and evaluation focusing on, but not limited to, clinical social work data, clinical goals and treatment plans for the implementation of psychotherapeutic counseling with individuals, groups and families. Clinical consultation may also include intervention with appropriate individuals and entities;

3. Psychotherapeutic counseling, defined as ongoing interaction between a social worker and an individual, family or group for the purpose of helping to resolve symptoms of mental disorder, psychosocial stress, relationship problems or difficulties in coping with the social environment;

4. Client centered advocacy, defined as the service in which, as part of the psychotherapeutic process, the social worker functions on behalf of individuals, families or groups to bring about or influence change to improve the quality of life, enhance empowerment and assure the basic rights of the client; and

5. Clinical supervision of individuals pursuant to the standards set forth in N.J.A.C. 13:44G-8.1.

"Social work" means the activity directed at enhancing, protecting or restoring a person's capacity for social functioning, whether impaired by physical, environmental, or emotional factors.

"Social work services" mean services which may be performed only by a Board licensee or certificate holder. Social work services include, but are not limited to, the following:

1. "Social work assessment," defined as identifying problems and gathering sufficient information to make referrals and to determine and implement a plan of social care and action;

2. "Social work consultation," defined as discussion and evaluation focusing on data, goals and objectives, including intervention with individuals, agencies, businesses, organizations, groups and communities for purposes of problem solving;

3. "Social work planning," defined as specifying future objectives, evaluating the means for achieving them, including identifying appropriate resources, and making deliberate choices about appropriate courses of action in order to enhance social well-being;

4. "Social work community organization," defined as the process of social interaction and the method of social work concerned with meeting broad needs and bringing about and maintaining adjustment between needs and resources in a community or other areas; helping people to deal more effectively with their problems and objectives by helping them develop, strengthen and maintain qualities of participation, self-direction and cooperation; and bringing about changes in community and group relationships and in the distribution

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of decision-making power. The community which is the primary client may be an organization, neighborhood, city, county, state or national entity;

5. "Social work policy," defined as the practice concerned primarily with translating laws, technical knowledge and administrative rulings into organizational goals and operational policies to guide organizational behavior; designing organizational structure and procedures or processes through which social work goals can be achieved; securing resources in the form of material, staff and clients; and obtaining the public support necessary for attaining social work goals;

6. "Social work administration," defined as applying specialized social work knowledge, skills and techniques to the coordinated totality of activities in a social welfare organization in order to transform policies into services; also, a method of practice by which the social worker plans, assigns, coordinates, evaluates and mediates the interdependent tasks, functions, personnel, and activities that are called upon to achieve the mission of the organization;

7. "Social work research," defined as the formal organization and the methodology of data collection and the analysis and evaluation of data; and

8. "Social work client-centered advocacy," defined as the service in which the social worker functions on behalf of individual clients, groups, or other entities including but not limited to social work and governmental agencies, and specific issues related to those organizations. The purpose of client centered advocacy is to bring about or influence change to improve the quality of life, enhance empowerment and assure the basic rights of the entity or individual being served by the social worker.

13:44G-1.3 Persons requiring licensure; persons requiring certification

Unless exempted from licensure or certification pursuant to N.J.S.A. 45:15BB-5, a person whose activities are within the scope of practice of N.J.A.C. 13:44G-3.1 is required to be licensed as a clinical social worker; a person whose activities are within the scope of practice of N.J.A.C. 13:44G-3.2 is required to be licensed as a social worker; and a person whose activities are within the scope of practice of N.J.A.C. 13:44G-3.3 is required to be certified as a social worker.

SUBCHAPTER 2. AGENCY ORGANIZATION AND ADMINISTRATION

13:44G-2.1 Description of the Board

(a) The State Board of Social Work Examiners, created in the Division of Consumer Affairs, Department of Law and Public Safety, pursuant to P.L. 1991, c.134, shall consist of nine members as follows:

1. Two public members;

2. The Commissioner of Human Services, or his or her designee;

3. Three individuals who have been actively engaged in the practice of social work for at least five years immediately preceding their appointment and, except for members first appointed, licensed or certified pursuant to P.L. 1991, c.124, as follows:

i. A licensed clinical social worker;

ii. A licensed social worker; and

iii. A certified social worker; and

4. Three individuals who, except for members first appointed, shall be licensed or certified pursuant to P.L. 1991, c. 124, as follows:

i. A social work educator representing a baccalaureate level program;

ii. A social work educator representing a master's level program; and

iii. A social worker with a doctorate level degree.

(b) The Governor shall appoint all Board members other than the Commissioner of Human Services or his or her designee. Except for members first appointed, all Board members shall be appointed for three-year terms.

(c) The Director of the Division of Consumer Affairs shall appoint an Executive Director and may hire any assistants as are necessary to administer the work of the Board.

13:44G-2.2 Office location and mailing address

The offices of the Board are located at 124 Halsey Street, Newark, New Jersey 07102. The mailing address of the Board is Post Office Box 45033, Newark, New Jersey 07101.

SUBCHAPTER 3. AUTHORIZED PRACTICE

13:44G-3.1 Practice as a clinical social worker; scope

(a) The scope of practice of a licensed clinical social worker includes, but is not limited to:

1. Clinical social work services, as defined in N.J.A.C. 13:44G-1.2; and

2. Social work services, as defined in N.J.A.C. 13:44G-1.2.

13:44G-3.2 Practice as a licensed social worker; scope

(a) The scope of practice of a licensed social worker includes, but is not limited to:

1. Social work services, as defined in N.J.A.C. 13:44G-1.2; and

2. Clinical social work services, as defined in N.J.A.C. 13:44G-1.2, under the supervision of a licensed clinical social worker pursuant to the clinical supervision standards set forth in N.J.A.C. 13:44G-8.1.

i. For a three-year period commencing (on the effective date of these rules), a licensed social worker may practice clinical social work under the supervision of any other supervisor acceptable to the Board pursuant to N.J.S.A. 45:15BB-6(a)(2) and N.J.A.C. 13:44G-8.1(c).

ii. Subsequent to (three years after the effective date of these rules), a licensed social worker shall practice clinical social work only under the supervision of a licensed clinical social worker.

13:44G-3.3 Practice as a certified social worker; scope

(a) The scope of practice of a certified social worker includes, but is not limited to, social work services, as defined in N.J.A.C. 13:44G-1.2.

(b) A certified social worker shall not engage in clinical social work services.

SUBCHAPTER 4. APPLICANT QUALIFICATIONS; BOARD-APPROVED EXAMINATION

13:44G-4.1 Eligibility requirements; licensed clinical social worker

(a) For purposes of this section, "two years of full-time clinical social work" means 1,920 hours of face-to-face client contact over any three consecutive year period under direct supervision pursuant to the standards set forth in N.J.A.C. 13:44G-8.1.

(b) An applicant for licensure as a clinical social worker shall submit the following, on forms provided by the Board.

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. An official transcript indicating that the applicant:

i. Received a master's degree in social work from an educational program accredited, or in candidacy for accreditation, by the Council on Social Work Education; or a doctorate degree in social work from an accredited institution of higher education;

ii. Completed 12 semester hours of course work in methods of clinical social work practice, exclusive of field placement, from an educational program accredited, or in candidacy for accreditation, by the Council on Social Work Education. The applicant shall obtain 12 credits in any of the following areas of study:

(1) Human behavior and the social environment;

(2) Diagnosis and assessment in social work practice;

(3) Models of psychotherapy or clinical practice (for example, psychodynamic, behavioral, cognitive therapies, task-centered, psychosocial, crisis intervention approaches, etc.);

(4) Clinical supervision and consultation; and/or

(5) Intervention with special populations;

4. A supervisor's certification or the applicant's affidavit in lieu of supervisor's certification indicating that the applicant has engaged in full-time clinical social work under supervision for at least two years as defined in (a) above; and

5. Proof that the applicant has successfully completed the clinical examination administered by the American Association of State

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Social Work Boards, unless the applicant is applying for licensure without examination pursuant to the provisions of N.J.A.C. 13:44G-5.1.

13:44G-4.2 Eligibility requirements; licensed social worker

(a) An applicant for licensure as a social worker shall submit the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. An official transcript indicating that the applicant has received a master's degree in social work from an educational program accredited, or in candidacy for accreditation, by the Council on Social Work Education; or a doctorate in social work from an accredited institution of higher education; and

4. Proof of successful completion of the intermediate examination administered by the American Association of State Social Work Boards, unless the applicant is applying for licensure pursuant to the provisions of N.J.A.C. 13:44G-5.2.

13:44G-4.3 Eligibility requirements; certified social worker

(a) An applicant for certification as a social worker shall submit the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1; and

3. An official transcript indicating that the applicant has received a baccalaureate degree in social work from an educational program accredited, or in candidacy for accreditation, by the Council on Social Work Education, unless the applicant is applying for certification pursuant to the provisions of N.J.A.C. 13:44G-5.3.

13:44G-4.4 Refusal to issue, suspension or revocation of license or certification

The Board may refuse to issue or renew or may suspend or revoke any license or certification issued by the Board, after an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., for any of the reasons set forth in N.J.S.A. 45:1-21.

SUBCHAPTER 5. LICENSURE WITHOUT EXAMINATION; CERTIFICATION WITHOUT PROOF OF EDUCATIONAL CRITERIA; ENDORSEMENT

13:44G-5.1 Licensure without examination; clinical social worker

(a) Until (180 days after application procedures are established), an individual who has not completed the board-approved examination may qualify for licensure as a clinical social worker upon submission of the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. An affidavit indicating that the applicant has acquired at least three years of full time clinical social work experience during the five-year period beginning May 6, 1986 and ending May 5, 1991;

4. A supervisor's certification or, if the supervisor is unavailable, the applicant's affidavit in lieu of supervisor's certification indicating that the applicant has acquired at least two years of supervised full time clinical social work experience, defined as 1,920 hours of direct face-to-face client contact over any consecutive three-year period; and

5. An official transcript indicating that the applicant completed the educational requirements set forth in N.J.A.C. 13:44G-4.1.

(b) For purposes of this section, "three years of full-time clinical social work experience" means 2,880 hours of direct face-to-face client contact or the providing of clinical supervision subsequent to earning a master's degree in social work. The applicant shall have provided the clinical supervision pursuant to the standards set forth in N.J.A.C. 13:44G-8.1.

13:44G-5.2 Licensure without examination; licensed social worker

(a) Until (180 days after application procedures are established), an individual who has not completed the Board-approved examination may qualify for licensure as a social worker upon submission to the Board of the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. An affidavit indicating that the applicant has acquired three years of full time social work experience during the five-year period May 6, 1986 to May 5, 1991; and

4. An official transcript indicating that the applicant completed the educational requirements set forth in N.J.A.C. 13:44G-4.2.

(b) For purposes of this section, "three years of full time social work experience" means 4,800 hours of social work practice subsequent to earning a master's degree in social work.

13:44G-5.3 Certification without baccalaureate degree in social work

(a) Until (180 days after application procedures are established), an individual who has not received a baccalaureate degree in social work may qualify for certification as a social worker upon submission to the Board of the following, on forms provided by the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1; and

3. An affidavit indicating that the applicant has acquired two years of full-time social work experience during the five-year period May 6, 1986 to May 5, 1991.

(b) For purposes of this section, "two years of full time social work experience" means 3,200 hours of social work practice.

13:44G-5.4 Endorsement

(a) An applicant who is licensed or registered under the laws of a state, territory or jurisdiction of the United States and who otherwise meets the requirements of N.J.A.C. 13:44G-4.1 and 4.2 may be exempted from the examination requirements of N.J.A.C. 13:44G-4.1 and 4.2 provided that:

1. The educational and experiential requirements of the state, territory or jurisdiction are substantially the same as the requirements of the Social Workers' Licensing Act of 1991; and

2. The applicant has taken an examination similar to the Board-approved examination.

(b) An applicant for licensure pursuant to this section shall submit the following to the Board:

1. A completed application form, which requests information concerning the applicant's educational and experiential background;

2. The application fee set forth in N.J.A.C. 13:44G-14.1;

3. The documentation required pursuant to N.J.A.C. 13:44G-4.1 or 4.2 relative to educational and experiential requirements for the type of licensure sought; and

4. Examination results.

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. LICENSE AND CERTIFICATION RENEWALS

13:44G-7.1 Biennial license and certification renewal

(a) Prior to the expiration of the current biennial period, the licensee or certificate holder shall complete and sign the biennial renewal notice form provided by the Board and shall return the form to the Board together with the biennial renewal fee.

(b) If the licensee fails to renew his or her license or certification on or before the date specified in the biennial renewal notice, the license or certification shall automatically expire and the individual shall immediately cease practice.

13:44G-7.2 Reinstatement

(a) If a license or certificate expires due to nonpayment of the biennial renewal fee, it may be reinstated within five years upon application to the Board, payment of the biennial license or certification fee and the reinstatement fee as set forth in N.J.A.C. 13:44G-14, and demonstration that any other requirements for license renewal have been met.

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(b) The Board will not renew a license or certificate if the renewal application is submitted to the Board more than five years after the date of license or certificate expiration. In such event, the individual shall be required to apply for an initial license and to take the Board-approved examination or to apply for initial certification.

SUBCHAPTER 8. CLINICAL SUPERVISION

13:44G-8.1 Clinical supervision

(a) An applicant for licensure as a clinical social worker shall be required to document at least two years of full time, supervised clinical social work experience, as defined in N.J.A.C. 13:44G-4.1, in accordance with the following clinical supervision standards:

1. Clinical supervision shall consist of contact between a social worker and a supervisor during which at least the following occurs:

i. The social worker apprises the supervisor of the diagnosis and treatment of each client;

ii. The social worker's cases are discussed;

iii. The supervisor provides the social worker with oversight and guidance in diagnosing and treating clients;

iv. The supervisor regularly reviews and evaluates the professional work of the social worker; and

v. The supervisor provides at least one hour of face-to-face individual clinical supervision per week.

2. Clinical supervision may be rendered by:

i. A clinical social worker licensed by this State;

ii. A Board certified psychiatrist licensed by the New Jersey Board of Medical Examiners;

iii. A psychologist licensed by the New Jersey Board of Psychological Examiners; or

iv. Any other supervisor the Board may deem acceptable.

3. All applicants, except those applying pursuant to the provisions of N.J.A.C. 13:44G-5, shall obtain the Board's prior written approval of any person rendering supervision other than a person identified in (a)2i through iii above.

4. The supervisor shall retain responsibility for the standards of clinical social work practice with respect to treatment being rendered to the client.

(a)

DIVISION OF CONSUMER AFFAIRS KOSHER ENFORCEMENT BUREAU

Regulations Concerning the Sale of Food Represented as Kosher

Proposed Repeal and New Rules: N.J.A.C. 13:45A-21
Proposed Repeal: N.J.A.C. 13:45A-22

Authorized By: Emma N. Byrne, Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-4.

Proposal Number: PRN 1993-397.

Submit written comments by August 18, 1993 to:

Yakov M. Dombroff, Chief
Kosher Enforcement Bureau
Post Office Box 45023
Newark, New Jersey 07101

The agency proposal follows:

Summary

Background:

In 1989 certain commercial establishments holding themselves out as kosher filed an appeal challenging the validity of these subchapters on State and Federal constitutional grounds. *Ran-Dav's County Kosher, Inc. v. State,* 129 *N.J.* 141 (1992), *cert. denied, sub nom. National Jewish Com'n on Law and Public Affairs (COLPA) v. Ran Dav's County Kosher, Inc.,* _____ *U.S.* _____, 113 *S.Ct.* 1366, 122 *L.Ed.2d.* 744 (1993). The facial challenge to the regulations was based on the Establishment Clause of the First Amendment to the United States Constitution and the Religion Clause of the New Jersey Constitution which precludes an establishment of one religious sect in preference to another. N.J. Const., art. I, Para. 4, 129 *N.J.* at 151. In assessing the constitutional validity of the regulatory scheme, the Supreme Court used the three prong test articulated by the United States Supreme Court in *Lemon v. Kurtzman,* 403 *U.S.* 602, 611-15, 91 *S.Ct.* 2105, 211-12, 29 *L.Ed.* 2d 745, 756-57 (1971), that is, the scheme must not foster "an excessive government entanglement with religion." Focusing on the third prong which prohibits excessive government involvement in religious matters, the Court found the regulations as then written "provide[d] both substantive standards for prescribing religious practices and procedures for their enforcement," 129 *N.J.* at 153-54. That the State defined kosher as products "prepared and maintained in strict compliance with the laws and customs of Orthodox Jewish religion," N.J.A.C. 13:45A-21.1, was particularly troublesome to the Court, which believed that having so defined kosher, the State would necessarily and impermissibly become embroiled in religious controversies. *Id.* at 154-55, 158. In rejecting the State's position that the laws governing kosher foods have become secular norms, the Court held that the regulations, by relying on religious tenets, served to advance a particular religion, thereby implicating the effects prong of the *Lemon* test. *Id.* at 163-64.

The Court nonetheless recognized, "[t]he State unquestionably has a valid interest in preventing fraud in the sale of any foods, including kosher foods" and upheld regulation of advertising and labeling of kosher products. *Id.* at 167. To assist the Division of Consumer Affairs in promulgating regulations that would not unduly entangle government in religion, the Court wrote: "The key to such a regulatory approach would be the religious supervision of the preparation and maintenance of products. The regulation could require those who advertise food products as 'kosher' to disclose the basis on which the use of that characterization rests." *Id.* The Court concluded:

> We therefore invalidate those portions of the regulations that impose substantive religious standards for the actual preparation and maintenance of kosher food. We do not invalidate the regulations *to the extent that they may require the full and accurate disclosure by kosher establishments of the basis on which they advertise and sell their products as "kosher." [Id.* at 168 (emphasis added)].

The Proposal:

The Division of Consumer Affairs is now proposing repeal of N.J.A.C. 13:45A-21 and 22 and proposing this new N.J.A.C. 13:45A-21. The proposed new rules essentially retain those portions of the existing rules that related to advertising, labeling and disclosure of information and, consistent with the Court's opinion, has eliminated sections that required adherence to Orthodox Jewish law and specific actions related to preparation and maintenance of kosher food. The new regulatory scheme is based on the Court's directive that dealers in food represented to be kosher disclose to the consuming public the basis on which the characterization of "kosher" rests. Because generally there is no requirement that food represented as kosher be prepared under rabbinical supervision, standards of supervision are varied and in fact many establishments do not have such supervision. The Division has therefore determined that disclosure of the basis of the representation of kosher must necessarily contain information that will enable consumers to make an informed choice concerning purchases of kosher food. Central, then, to the new regulatory scheme is the requirement that persons who hold themselves out as selling or serving kosher food complete and file a disclosure form and post a sign provided by the Division in the establishment which specifies the standards and practices to which they adhere and which forms the basis of their representations to the consuming public.

Having mandated that the dealer disclose its standard of kosher, the State's enforcement policy will focus on the consistency between that disclosure and actual practices of the dealer and products advertised and sold. This scheme implements the Court's suggestion that merchants be compelled to perform a secular obligation based on specific representations, 129 *N.J.* at 168. Failure to conform practices and products to the disclosure that is posted and filed with the Division will constitute an unlawful practice under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

The Division is developing disclosure forms for various retail establishments including bakeries, delicatessens, catering facilities, and butchers. These forms require the dealer in kosher food to check off certain practices and procedures related to the purchase and preparation of kosher food. No standard of kosher is established by the State. No substantive religious requirements are codified. Each dealer, by virtue

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of the completed disclosure form, sets forth his definition of kosher. Each consumer is free to accept or reject that standard. The Division's enforcement actions are based on the stated representations of the dealer. Concerns that the State would become an arbiter of religious disputes or would impermissibly advance one religion over another have, therefore, been eliminated.

Persons whose conduct is governed by the proposed new rules include "dealers" defined as "any establishment that advertises, represents or holds itself out as selling, preparing or maintaining kosher food. This shall include, but not be limited to, manufacturers, slaughterhouses, wholesalers, stores, restaurants, hotels, catering facilities, butcher shops, summer camps, bakeries, delicatessens, supermarkets, grocery stores, nursing homes, freezer dealers, and food plan companies. Such establishments may also deal in food not represented as kosher."

The Division is aware that many establishments, such as small grocery stores, do not hold themselves out as kosher but nonetheless carry kosher products. Persons whose sole representation of kosher is limited to "properly sealed packages," defined as "packages which bear kosher symbol insignia and are sealed by the manufacturer, processor or wholesaler at its premises," are exempted from the filing and disclosure requirements. N.J.A.C. 13:45A-21.1. Therefore, an etablishment that carries any of the thousands of products in properly sealed packages that bear kosher symbols and which does not represent itself as kosher need not post a disclosure sign nor file any statements with the Director.

Dealers are required pursuant to N.J.A.C. 13:45A-21.2 to post on their premises a completed disclosure statement as provided by the Division. If the dealer represents itself as having rabbinical supervision, or if it represents that it sells food represented as kosher for Passover, it must post the separate disclosures required by N.J.A.C. 13:45A-21.2(b) and (c). Dealers must file copies of the disclosures on forms provided with the Division and must conform sales practices to the disclosures. Where food is sold pursuant to a contract, for example, a catered affair, dealers must provide a copy of the disclosure to a party to the contract. When any disclosed practice changes, N.J.A.C. 13:45A-21.2(f) mandates that a dealer post corrected disclosure forms and advise the Division Director of the change within seven business days. A dealer who represents that it is under rabbinical supervision is required to maintain a permanent log of that supervisor's visits. It is expected that the posted disclosure will reflect the number of periodic visits made by a supervisor. The log, devoid of any religious significance, merely provides the Division with an ability to confirm the accuracy of the posted representation.

N.J.A.C. 13:45A-21.3, Labeling requirements, sets out the tagging and identification requirements for slaughterhouses and wholesalers. Subsections (a) through (d) set forth requirements for tags on specific portions of meat and for wash letters. Subsection (e) sets out identification requirements for poultry. Subsection (f) permits a poultry processor to apply to the Director for an exemption from the labeling requirements based on volume sales to an individual entity. The Director retains the discretion to approve alternative labeling requirements. Subsection (g) mandates that tags and plumbas be securely affixed and that slaughterhouses and wholesalers who have sold meat or poultry that is not properly identified accept return of those products. Subsections (i) and (j) require that identifying marks not be removed until immediately preceding use or final fabrication of the product. Where a dealer represents that meat is not soaked and salted, but washed, subsection (k) requires the date and time of washing to be disclosed. Subsections (l) and (m) pertain to labeling requirements for packages of raw meat. These requirements, neutral on their face, are consistent with the Supreme Court's recognition of the propriety of regulation of labeling products.

N.J.A.C. 13:45A-21.4 sets forth recordkeeping requirements for dealers. Those include retaining records for purchases of meat and poultry represented as kosher for two years following purchase and retaining wash letters attached to invoices as long as the meat is in the possession of the dealer.

N.J.A.C. 13:45A-21.5 sets forth the Division's filing procedures for dealers. This annual filing is separate from the copy of the disclosure statements filed with the Division pursuant to N.J.A.C. 13:45A-21.2(d). The annual filing includes a letter from the person or entity providing kosher certification or, if an establishment is not under rabbinical supervision, a letter so stating. Subsection (b) requires individuals or organizations giving rabbinical supervision to any person located in New Jersey to file a document listing the name, address and type of establishment supervised. Subsection (c) mandates written notification to the Director within seven business days in the event of change. Subsection (d) exempts from the filing requirement persons whose sole representation of kosher is limited to properly sealed packages.

N.J.A.C. 13:45A-21.6 provides that inspections of persons making any representation of kosher are to be conducted by authorized inspectors of the Division who shall have the right of entry to, upon and through the business premises.

N.J.A.C. 13:45A-21.7 outlines unlawful practices by dealers and regulates advertising claims by dealers and persons not representing food as kosher. Failure by dealers to post or file required disclosures is an unlawful act. Failure to conform sales practices to the disclosures made to the public and filed with the Division is an unlawful practice as the dealer, having made a specific representation concerning the establishment, must abide by that representation. For example, while the regulations do not require that meat and dairy products be separated, if a dealer represents that meat products and dairy products are separately maintained and different utensils are used for each, the dealer has obligated himself to maintain that standard. Failure to do so constitutes a misrepresentation and is a violation of the Consumer Fraud Act. N.J.S.A. 56:8-1 et seq.

N.J.A.C. 13:45A-21.7(e) places restrictions on advertisements by dealers who fail to post and file disclosures or persons who do not represent themselves as selling or offering for sale kosher food. Because each establishment may define kosher and set its own standard the Division directs that use of terms such as "kosher," "glatt," "pareve" or use of various insignia such as a six pointed star, menorah or other commonly used kosher mark must be accompanied by a clear statement of the establishment's standard of kosher (that is the disclosure) or by a conspicuous disclaimer that the food offered for sale and sold is not represented to be kosher. N.J.A.C. 13:45A-21.7(e)2 exempts from this requirement persons whose sole representation of kosher is limited to properly sealed packages.

Where a dealer represents itself as having rabbinical supervision, N.J.A.C. 13:45A-21.7(f) and (g) make it unlawful to fail to include the name of the supervising rabbi or agency in the advertisement and to fail to conform to the requirements of that supervision. Subsection (h) makes it unlawful for persons to use recognized kosher food symbols without written authorization from the person or agency represented by that symbol.

The experience of the Division is that manufacturers use terms such as kosher, pareve or place the letter "k" on packages when the product is produced under rabbinical supervision. Therefore to avoid the potential for confusion in the marketplace, subsection (i) requires that properly sealed packages bearing the word kosher, pareve, or the letter "k" when not produced under kosher supervision bear a statement so indicating on the label. Subsection (j) makes unlawful the use of the letter "P" as part of a kosher symbol unless the product is represented as kosher for Passover. This regulation reflects current industry practice. Subsection (k) makes it unlawful for persons other than a manufacturer or packer at its premises to possess kosher symbols unless the holder of the symbol has authorized its use. This regulation addresses the problem of persons affixing a symbol that indicates supervision of the product when that supervision does not exist for the product or in that establishment.

Subsection (l) makes it unlawful to possess meat or poultry represented as having been slaughtered to be sold as kosher when the meat or poultry is not properly identified with the slaughterhouse tag or plumba or the wholesaler's tag. This regulation is necessary for the protection of wholesalers, retailers, and consumers. Slaughterhouses are required pursuant to N.J.A.C. 13:45A-21.3 to identify meat and poultry at time of slaughter with tags, plumbas, and/or incisions. N.J.A.C. 13:45A-21.3(i) and (j) require that tags not be removed until time of final fabrication of the product. Retail dealers need to assure themselves that the wholesaler is representing the product accurately. Where an establishment has indicated on its disclosures that its meat and poultry are identified at the slaughterhouse as kosher, the only way for the Division or a consumer to determine the accuracy of that representation is to inspect the slaughterhouse tag or plumba. Possession of meat and poultry not properly identified, therefore, is unlawful.

Subsections (m) and (n) make it unlawful to fail to comply with the labeling and recordkeeping requirements of N.J.A.C. 13:45A-21.3 and 21.4. Subsections (o) through (s) make it unlawful to fail to cooperate with inspectors and other requests from the Division.

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N.J.A.C. 13:45A-21.8 establishes the presumption that possession of any food not in accordance with the disclosure is evidence that the person intends to sell that product.

Social Impact

These proposed repeals and new rules will have a positive social impact as they continue New Jersey's long standing commitment to consumer protection and particularly in the sale of foods represented as kosher. The requirement of truthful and accurate disclosures in commercial transactions is the cornerstone of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. The posted disclosures as well as the disclosures filed with the Division allow interested persons to make informed choices consistent with their needs, whether for religious, health or other reasons.

Economic Impact

The economic impact of the proposed repeal and new rules is negligible. The Division will provide the disclosure forms to be posted by dealers as well as the forms to be returned to the Division. Costs associated with completing, posting, and returning the disclosure statements include only use of a marker, hanging the signs and postage. Where food is sold to a consumer pursuant to a contract, a dealer will incur duplication costs of the disclosure. The logbook to be maintained by dealers who represent themselves as being under supervision need only be a notebook. The requirements for labeling meat and poultry at the slaughterhouse, N.J.A.C. 13:45A-21.3, have been in effect for several decades and generally reflect industry practice. As such, no additional expenses are anticipated. Compliance with recordkeeping requirements involves only retention of documents, not creation of any new material.

Regulatory Flexibility Analysis

Compliance with these proposed new rules requires posting and filing disclosure statements, including certain information in advertisements (for example, the name of the supervising rabbi or agency if advertising that the establishment is under rabbinical supervision), filing annually with the Division a statement regarding presence or absence of rabbinical supervision, and for dealers in meat and poultry maintaining records of purchases on premises for two years and maintaining wash letters as long as the meat is in the possession of the dealer. As discussed in the Economic Impact statement above, there is little cost associated with the disclosure and filing requirements and costs associated with conforming advertisements to the regulations are minimal. Requirements for meat and poultry dealers to keep records of purchases for two years on premises has not been changed from the earlier regulatory scheme and, with the possible exception of the need for filing space, do not create additional costs or work. Nothing in the rules requires a dealer to incur costs related to professional services, including rabbinical supervision to comply. Finally, given the need for consistency in assuring disclosures are available to the consuming public, there is no provision for exempting small businesses from the requirements.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A-21 and 22.

Full text of the proposed new rules follows:

SUBCHAPTER 21. REGULATIONS CONCERNING THE SALE OF FOOD REPRESENTED AS KOSHER

13:45A-21.1 Definitions

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

"Advertises, represents or holds itself out" means engaging, directly or indirectly, in promotional activities including, but not limited to, oral representations, newspaper, radio and television advertising, distribution of fliers and menus.

"Dairy" means a food that is or contains any milk or milk derivative.

"Dealer" means any establishment that advertises, represents or holds itself out as selling, preparing or maintaining food as kosher. This shall include, but not be limited to, manufacturers, slaughterhouses, wholesalers, stores, restaurants, hotels, catering facilities, butcher shops, summer camps, bakeries, delicatessens, supermarkets, grocery stores, nursing homes, freezer dealers and food plan companies. Such establishments may also deal in food not represented as kosher.

"Director" means the Director of the Division or his or her designee.

"Disclosure" means the form(s) provided by the Division and executed by a dealer for the purpose of disclosing to consumers and to the Division practices relating to the preparation, handling and sale of food represented to be kosher.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Food" means a food, food product, ingredient, dietary supplement or beverage.

"Kosher brand" means a branding symbol approved by the United States Department of Agriculture and used by slaughterhouses.

"Meat" means animal and/or poultry meat, meat products and/or meat by-products.

"Pareve" means a food which contains neither meat nor dairy products and unless otherwise disclosed by the merchant is represented to be kosher.

"Person" means an individual, corporation, business trust, trust, estate, partnership, association, two or more persons having a joint or common interest or any other legal or commercial entity. When used in this subchapter, "person" shall include, but not be limited to, all retail establishments, all dealers as defined above, manufacturers, wholesalers, processors, slaughterhouses and all others along the chain of commerce from the time the product is produced or, in the case of meat or poultry, from the time of slaughter to the time of its sale.

"Plumba" means the seal commonly used in the kosher industry with the word "kosher" indicated either in English or Hebrew letters, and with certain letters, figures or emblems indicated that will positively identify such plumba with the particular slaughterhouse where the animal or poultry was slaughtered or processed.

"Properly sealed packages" means those packages which bear a kosher symbol insignia and are sealed by the manufacturer, processor or wholesaler at its premises.

"Sell" means to offer for sale, expose for sale, serve or sell, directly or indirectly.

"Tag" means an identification of whatever form bearing the name and address of the slaughterhouse where the animal was slaughtered, the name of the person who sanctioned the slaughtering of meat at the slaughterhouse named and the date of the slaughter. All requisite information must be included in English with Arabic numerals. It may also contain the information in other languages. When information presented in English with Arabic numerals conflicts with information presented in other languages, the information presented in English with Arabic numerals shall be considered definitive.

"Wash letter" means the document stating the time and date the meat was last washed. All requisite information must be included in English with Arabic numerals. It may also contain information in other languages. When this information is not delineated on the attached tags, the wash letter must accompany the meat until the meat is fully fabricated. When information presented in English with Arabic numerals conflicts with the information presented in other languages, the information presented in English with Arabic numerals shall be considered definitive.

"Wholesaler" means any person selling food to another person where that food is intended for resale.

13:45A-21.2 Disclosure requirements

(a) A dealer shall post on premises where food is sold, in a location readily visible to the consumer, a completed disclosure statement provided by the Division for that purpose.

1. In establishments such as hospitals or other places where representations that food is kosher are not made until after the consumer has made a request for kosher food, the disclosure shall be provided to the consumer either prior to serving the food or together with the food served.

2. Nursing homes, summer camps, caterers or other places providing food pursuant to a contract shall provide the consumer or his or her legal representative with a copy of the disclosure prior to the signing of the contract. This requirement is in addition to the posted dislosure stated in (a) above.

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(b) A dealer representing itself as having rabbinical supervision shall post in a location on its premises, readily visible to the consumer, the completed rabbinical supervision disclosure statement provided by the Division.

(c) A dealer selling food represented as kosher for Passover shall post on its premises, in a location readily visible to the consumer, a completed Passover disclosure provided by the Division for that purpose. The disclosure must be posted at least 30 days before Passover and stay posted until the conclusion of Passover.

1. Nursing homes, summer camps, caterers or other places providing food during Passover pursuant to a contract shall provide the consumer or his or her legal representative with a copy of the disclosure prior to the signing of the contract. This requirement is in addition to the posted disclosure stated in (c) above.

(d) A dealer shall complete and return to the Division within seven business days of receipt:

1. The copy of the disclosure form provided by the Division for that purpose; and

2. If representing to be under rabbinical supervision, the copy of the disclosure form provided by the Division for that purpose; and

3. If representing the sale of food as kosher for Passover, the copy of the disclosure form as provided in (c) above.

(e) A dealer completing the disclosures as stated in (a), (b), (c) and/or (d) above is required to conform sales practices to those disclosures.

(f) Dealers shall immediately amend disclosures to reflect any change in the posted practices and shall inform the Director, in writing, and if applicable, any party to a contract, within seven business days of any change in the stated information.

(g) A dealer representing itself as being under rabbinical supervision shall maintain a permanent logbook that shall include for each inspection visit of the supervising rabbi or his representative the signature and printed name of the person performing the inspection, date and time of arrival at the establishment. The logbook shall be maintained for a period of not less than two years after the final entry.

(h) Persons advertising the sale of both food represented as kosher and food not represented as kosher shall display in a prominent place in its front window or front entrance the following sign which shall be printed in block letters at least four inches in height: "KOSHER AND NON-KOSHER FOOD SOLD HERE."

1. In the case of a restaurant, hotel, caterer or other place where food is served the word "SERVED" may be submitted for "SOLD."

(i) Any person whose sole representation of kosher is limited to properly sealed packages prepared by others shall be exempt from the requirements of this section.

13:45A-21.3 Labeling requirements

(a) A dealer shall ensure that all meat and/or poultry slaughtered to be sold as kosher shall have affixed to it at the slaughterhouse a tag and/or plumba.

(b) The day of the slaughter, where required, shall be reflected by an incision of a Hebrew letter or an English letter, A through F, with Sunday being represented with the letter A. The identification shall be affixed as follows:

1. All forequarters of steers, cows, bulls, heifers, and yearling calves ("baby beef"), shall arrive at wholesalers and butchers with the following kosher identifications:

i. Breast, rib plate, chuck, shoulder: A tag attached by a wire or plastic. Additionally, the rib-cage of each quarter shall indicate the day of slaughter;

ii. All hanging tenders, spleens, oxtails, hearts and intestines (kishka) shall be identified with a tag attached by a wire or plastic, and by the use of a rubber stamp. Skirt steaks (from the diaphragm) when disconnected at the packing house or deboning rooms shall be affixed with a tag attached by a wire or plastic or legibly stamped with a stamp indicating the date of slaughter and kosher supervisor's name;

iii. Liver: two kosher brands, one on the liver's top portion, the other near the bottom. Additionally, a tag shall be attached to the white sinew on the liver's side, by a wire or plastic;

iv. Feet: a tag attached by a plumba-wire to each foot;

v. Breads: a tag attached by a plumba-wire to each pair;

vi. Brains: a tag attached by a plumba-wire to each brain when sold separately from the head;

vii. Tongue: a tag attached by a wire or plastic, as well as a kosher brand; and

viii. Breastbone: incisions indicating day of slaughter;

2. All foresaddles of veal shall arrive at wholesalers and butchers with the following identification attached at the slaughterhouse:

i. Breast: incision on each breast indicating day of slaughter. In addition, each breast shall be affixed with a tag attached by a plumba-wire;

ii. Rack: each rack shall bear an incision, in the rib-cage area, indicating the day of slaughter. If wholesalers, butchers or processors ship the rack separately, a tag shall be affixed by a wire or plastic to each rack;

iii. Liver: a kosher brand, plus a tag attached by a wire or plastic at the white sinew on the liver's side;

iv. Feet: a tag attached by a plumba-wire;

v. Breads: a tag attached by a plumba-wire to each pair; and

vi. Tongue: a tag attached by a wire or plastic, plus a kosher brand;

3. All foresaddles of lamb and mutton shall arrive at wholesalers and butchers with the following identification attached at the slaughterhouse:

i. Breast: incision on each breast indicating day of slaughter. In addition, each breast shall be affixed with a tag attached by a plumba-wire;

ii. Rack: each rack shall bear an incision, in the rib-cage area, indicating the day of slaughter. If wholesalers, butchers or processors ship the rack separately, a tag shall be affixed by a wire or plastic to each rack;

iii. Liver: a kosher brand, plus a tag attached by a wire or plastic at the white sinew on the liver's side; and

iv. Tongue: a tag attached by a wire or plastic, plus a kosher brand; and

4. Cheek-meat, ground (chopped) meat, shoulder clods, skirts, flanken, and other such meat that are piled or stored inside plastic bags or vacuum packed and thereafter shipped, shall have a tag placed inside the bag or container as well as a kosher stamp or tag attached to the package's exterior. If the items have not been salted, a tag indicating the last washing shall be included. Meat shipped as indicated in this paragraph shall not be contained in packages exceeding 10 pounds. Each brisket or plate shipped in "combos" shall be affixed with a tag.

(c) Portions of meat, excluding poultry, having been fabricated by the wholesaler, regardless of the size of the portion, must have a tag affixed to it. The tag shall bear the name and address of the wholesaler, the name of the slaughterhouse from which the meat was purchased, the name of the authority sanctioning the kosher slaughter, the date of the fabrication of the meat and whether the meat has been soaked and salted. If the meat was not soaked and salted the tag must include the date and time of the last washing of the meat.

(d) A document containing the information specified in (c) above may be substituted for the tag provided that the meat is identified with either a tag or plumba.

(e) Except as provided in (f) below, all poultry sold as kosher must have plumbas affixed at the slaughterhouse, as follows:

1. Turkey necks: 10 pounds or less, in a bag securely closed with a plumba.

2. Chicken necks: five pounds or less, in a bag securely closed with a plumba.

3. Chicken and turkey livers: five pounds or less, in a bag securely closed with a plumba.

4. Chicken and turkey gizzards: five pounds or less, in a bag securely closed with a plumba.

5. Chicken wings: five pounds or less, in a bag securely closed with a plumba.

6. Turkey wings: 10 pounds or less, in a bag securely closed with a plumba.

7. Chicken and turkey thighs with back portion: five pounds or less, in a bag securely closed with a plumba.

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8. Chicken and turkey legs: five pounds or less, in a bag securely closed with a plumba.

9. Chicken and turkey boneless breasts: five pounds or less, in a bag and securely closed with a plumba.

10. Chicken and turkey breasts: five pounds or less, in a bag securely closed with a plumba.

11. Chicken and turkey boneless bottom meat: five pounds or less, in a bag securely closed with a plumba.

12. Chicken and turkey whole poultry: Each piece shall have a plumba securely affixed to it.

(f) A poultry processor may apply to the Director for an exemption from the labeling requirements of (e) above based on volume sales to an individual entity. The Director retains discretion to approve alternative labeling requirements for such shipments.

(g) The slaughterer and/or wholesaler of poultry and/or meat sold as kosher shall ensure that plumbas and/or tags are affixed and so remain, as stated in this section. Slaughterers and/or wholesalers who have sold meat and/or poultry not in compliance with this section shall not refuse to accept returned poultry and/or meat and must provide a refund for the returned item.

(h) All excised fats, veins or meat trimmings which will be sent to a renderer or discarded shall be put into receptacles marked DISCARD. Such fats, veins and trimmings shall not then be sold or used as kosher.

(i) A dealer shall not remove plumbas, tags or any other marks of kosher identification affixed to meat and/or poultry at the slaughterhouse or by the wholesaler until immediately preceding the final fabrication of the product.

(j) A dealer shall not remove the identifying kosher marks of any food until immediately prior to the sale or use of the product.

(k) A dealer who represents in its disclosure that it does not soak and salt its meat but washes it within every 72 hour period, shall disclose legibly the date and time of the day, A.M. or P.M., of each washing and the name of the person performing the washing, on all tags attached to the meat or shall write the information on a wash letter. This applies to all meat sent from slaughterhouses, wholesalers, butcher shops, or any other place until the meat has been fully fabricated.

(l) A dealer shall indicate the date of packaging on the label of packaged raw meat, excluding poultry.

(m) A dealer shall ensure that packaged raw meat, excluding poultry, shall bear one of the following disclosures: "soaked and salted," "not soaked and salted" or "soaked and salted upon request only."

13:45A-21.4 Recordkeeping requirements

Complete and accurate records of all meat and/or poultry purchased as kosher shall be kept by dealers. This shall include the name and address of the slaughterhouse, wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat and/or poultry, and copies of all invoices and bills of sale. A dealer shall retain such records on its premises for a two year period following the purchase of properly identified kosher meat and/or poultry. Wash letters as referred to in N.J.A.C. 13:45A-21.1 shall be kept as long as the meat is in possession of the dealer and shall be kept attached to its appropriate invoice.

13:45A-21.5 Filing requirements

(a) Every dealer shall file annually with the Director:

1. If the dealer is under rabbinical supervision, a letter, in English, from a supervising rabbi or rabbinical agency that the dealer is rabbinically supervised. The letter shall include the name and address of the person providing the certification, the date the letter was issued, the date it becomes effective, the date it expires, the name and address of the dealer receiving certification and the type of establishment certified;

2. In the case of products produced on behalf of another person, a letter, in English, from the supervising rabbi or rabbinical agency that states the name and address of the person providing the certification, the date the letter was issued, the date it becomes effective, the date it expires, the name and address of the manufacturer receiving certification, the type of establishment certified, and where applicable, the specific products and brands certified; or

3. If the establishment is not under rabbinical supervision, a letter so stating.

(b) Any individual or organization giving rabbinical supervision to any dealer located in New Jersey shall file annually with the Director a document listing the name, address and type of each establishment that is supervised.

(c) Dealers required to file pursuant to this section shall provide written notification to the Director of any change related to rabbinical supervision, represented status, address or ownership status within seven business days of such change.

(d) Any person whose sole representation of kosher products is limited to properly sealed packages prepared by others shall be exempt from the requirements of this section.

13:45A-21.6 Inspections of dealers

(a) Inspections are to be conducted by authorized inspectors of the Division.

(b) For the purpose of making any inspection an inspector shall have a right of entry to, upon and through the business premises of persons making any representation of kosher.

13:45A-21.7 Unlawful practices

(a) In addition to a violation of any other laws, the following shall constitute an unlawful practice under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.:

1. Failure to comply with the disclosure requirements of N.J.A.C. 13:45A-21.2;

2. Failure to comply with the filing requirements of N.J.A.C. 13:45A-21.5;

3. Failure to conform sales practices with the posted disclosures;

4. Failure to conform posted disclosures with the disclosure filed with the Division;

5. Use of any of the following in the advertisement or sale of any food by a dealer that fails to post or file the required disclosure or by a person not representing itself as selling kosher food:

i. By direct statements, orally or in writing, that the food sold is kosher or pareve;

ii. By display or by inscription on any food or its package, container or contents, the word "kosher", "pareve", "Glatt" or "rabbinical supervision" or similar expression, in any language, or by any sign, emblem, insignia, six-pointed star, Menorah, symbol or mark in simulation of the word kosher unless such inscription is on a properly sealed package; or

iii. By display on any interior or exterior sign, menu or otherwise, or by advertisement, either oral or in writing, the words "kosher-style", "kosher-type", "Jewish", "Hebrew", "holiday (Jewish) foods", "traditional (Jewish)", "Bar Mitzvah", "Bat Mitzvah" or other similar words, either alone or in conjunction with the word "type", "style" or other similar expression, unless there is clearly and conspicuously stated a disclaimer in the same size type or letters in some prominent place or location on the sign or menu or in the case of an advertisement in type no smaller than the smallest type in the advertisement, and in no event less than 10-point type, that the product or products offered for sale are not represented as kosher.

(1) The disclaimer shall appear in a box within the advertisement and shall be preceded with the word "NOTICE" or other similar word, in not smaller than bold 14-point type.

(2) An advertisement that utilizes any kosher symbol that also promotes the sale of non-kosher food is in violation of this section unless there is clearly and conspicuously stated in the advertisement a disclaimer in accordance with the requirement of this section, that some of the food offered for sale is not represented to be kosher;

6. By advertising an establishment as being under rabbinical supervision without including in the advertisement the name of the supervising rabbi or agency;

7. By representing a food and/or an establishment as being under rabbinical supervision when that food and/or establishment is not in conformance with the requirements of that supervision;

8. Use by any person of a recognized kosher food symbol, including but not limited to OU, OK, Kof-K, Triangle-K, Star-K, without

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first obtaining written authorization from the person or agency represented by that symbol;

9. Use of the word(s) "kosher" or "pareve" or a kosher symbol insignia or the letter(s) "K", "KP", or "KD", on properly sealed packages that are not produced under rabbinical supervision, shall bear the statement "not under rabbinical supervision" in bold type on the label;

10. Use of the letter "P" as part of a kosher symbol on any product when that product is not represented as kosher for Passover;

11. Possession by any person, other than the manufacturer or packer at its premises, of kosher or kosher for Passover identification bearing a kosher symbol, unless the certifying entity of that symbol authorizes application of that symbol to that product on that premise;

12. Possession by any person of meat and/or poultry represented as having been slaughtered to be sold as kosher, when that meat and/or poultry is not properly identified with the slaughterhouse tag and/or plumba or the wholesaler's tag;

13. Failure to comply with the labeling requirements of N.J.A.C. 13:45A-21.3;

14. Failure to comply with the recordkeeping requirements of N.J.A.C. 13:45A-21.4;

15. Failure to allow an inspector entry upon the business premises of a dealer or to interfere in any way with an inspection;

16. Failure to respond in a timely fashion to an inquiry conducted by the Division;

17. Failure to attend any scheduled proceeding as directed by the Division. In the event that a person elects to retain counsel for the purpose of representation in any such proceeding, it shall be the person's responsibility to do so in a timely fashion. The failure of a person to retain counsel, absent a showing of good cause for such failure, shall not require an adjournment of the proceeding;

18. Failure to answer any question pertinent to an inquiry made pursuant to N.J.S.A. 56:8-3, or other applicable law, unless the response is subject to a *bona fide* claim of privilege; or

19. Failure to make a proper and timely response by way of appearance and/or production of documents to any subpoena issued pursuant to N.J.S.A. 56:8-3 or as otherwise may be provided by law.

13:45A-21.8 Presumptions

Possession by a dealer of any product not in conformance with its disclosure is presumptive evidence that the dealer is in possession of that food with the intent to sell.

(a)

DIVISION OF STATE POLICE

Motor Carrier Safety Regulations

Proposed Readoption with Amendments: N.J.A.C. 13:60

Authorized By: Colonel Justin J. Dintino, Superintendent, Division of State Police.

Authority: N.J.S.A. 39:5B-32.

Proposal Number: PRN 1993-394.

Submit written comments no later than 5:00 P.M., Wednesday, August 18, 1993 to:

Col. Justin J. Dintino, Superintendent
Division of State Police
Division Headquarters
Office of Hazardous Materials Transportation
Compliance and Enforcement
P.O. Box 7068
West Trenton, N.J. 08628-0068

The agency proposal follows:

Summary

Pursuant to P.L. 1991, c.491, amending N.J.S.A. 39:5B-32, the Superintendent of the Division of State Police (hereafter Superintendent), in consultation with the Division of Motor Vehicles and the Department of Transportation, was directed to revise and readopt the Motor Carrier Safety Regulations, previously adopted by the Superintendent at N.J.A.C. 13:60, pursuant to P.L. 1985, c.415, §3. The revised and readopted regulations were to provide that the regulations:

"(1) Substantially conform to the requirements concerning the qualifications of interstate motor carrier operators and vehicles established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982," Pub.L. 97-424 (49 U.S.C. App. §§2301-2304) and the federal "Motor Carrier Safety Act of 1984," Pub.L. 98-554 (49 U.S.C. App. §2501 et seq.); and

(2) Include provisions with regard to motor carrier operators and vehicles engaged in intrastate commerce or used wholly within a municipality or a municipality's commerical zone, except for farm vehicles registered pursuant to R.S. 39:3-24 and R.S. 39:3-25, that are compatible with federal rules and regulations."

The amendatory language also required:

"The rules adopted pursuant to this section shall include rules concerning protection against shifting or falling cargo contained in 49 C.F.R. §§393.100 to 393.106."

Since 1987, with the initial adoption of the rules currently found at N.J.A.C. 13:60, the State of New Jersey has been enforcing Federal regulations pertaining to "Motor Carrier Safety," more particularly the Federal Motor Carrier Safety Regulations as found at 49 C.F.R. Parts 390 through 397. However, enforcement was limited to vehicles operating in interstate commerce or vehicles operating in interstate or intrastate commerce transporting hazardous material(s) in quantities requiring hazardous material(s) placarding.

Before the above rules were adopted, rules pertaining to the transportation of hazardous materials, which include the above referenced Federal regulations pertaining to Motor Carrier Safety, had already been in effect in this State. The Commissioner of Transportation (hereafter Commissioner), New Jersey Department of Transportation, in 1985, acting under the provisions of N.J.S.A. 39:5B-26 and 29c, proposed and adopted rules at N.J.A.C. 16:49 which adopted, by reference, the Federal regulations pertaining to the Transportation of Hazardous Materials as found at 49 C.F.R. Parts 100 through 199. Those rules, as adopted by the Commissioner, specifically incorporate, at 49 C.F.R. §177.804, the Federal Motor Carrier Safety Regulations, as found at 49 C.F.R. Parts 390 through 397.

Effective January 16, 1992, and pursuant to Executive Order No. 66(1978), the Superintendent readopted the rules concerning Motor Carrier Safety (N.J.A.C. 13:60). Amendments proposed with that readoption became effective February 18, 1992, upon publication in the New Jersey Register. (24 N.J.R. 644(a), February 18, 1992.) Through that action the Superintendent readopted, by reference, the Federal Motor Carrier Safety Regulations as found at 49 C.F.R. Parts 390 through 397, Code of Federal Regulations, Title 49, revised edition, October 1, 1989.

Effective February 8, 1990, and pursuant to Executive Order 66(1978), the Commissioner readopted the rules at N.J.A.C. 16:49, which included readoption of the Federal Motor Carrier Safety Regulations as found at 49 C.F.R. Parts 390 and 397, Code of Federal Regulations, Title 49, revised edition, October 1, 1989.

In both of the readoptions, by the Superintendent and the Commissioner, the specific Federal regulations adopted by reference were:

The Code of Federal Regulations: Parts 390 through 397, Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49—Transportation, revised edition, October 1, 1989, (N.J.A.C. 13:60-2.1 and 16:49-2); and

The Code of Federal Regulations: Parts 171, 172, 173, 174, 177, 178, 179, 180, Subchapter C—Hazardous Materials Regulations, Chapter I—Research and Special Programs Administration, Department of Transportation, Title 49—Transportation, revised edition, October 1, 1989 (N.J.A.C. 16:49-2.1).

The most recent amendment to the authorizing legislation states that the rules and regulations adopted by the Superintendent are to "substantially conform" to Federal enactments and are to be "compatible with federal rules and regulations." In this proposal, as has been done in past regulatory actions, the Superintendent is proposing to readopt the Federal Motor Carrier Safety Regulations with only minor changes necessary to reduce, to the extent permitted, any adverse economic impact which might befall industries situated in this State. Accordingly, the within proposal continues to "substantially conform" to Federal enactments and is, to the fullest extent feasible, "compatible with federal rules and regulations."

The amendment to the authorizing legislation also called for the adoption of "rules concerning protection against shifting or falling

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cargo." The Federal regulations cited in the amendatory legislation have been incorporated in N.J.A.C. 13:60 since its original adoption in 1987. Other than periodic amendments necessary to conform to any future changes in those regulations, as adopted by the Secretary of Transportation, no further changes are proposed in this readoption with amendments.

Pursuant to the authorizing statute for the within rules, the Superintendent consulted with appropriate representatives of the Division of Motor Vehicles and Department of Transportation on the substance of the rules to be readopted and amended herein. As a result of these consultations the Superintendent now proposes to readopt and amend the rules previously readopted at N.J.A.C. 13:60.

The previously adopted rules did not include within their scope motor carriers, motor carrier vehicles or operators who were operating in intrastate commerce. The within proposed amendments will make the following motor carriers, motor carrier vehicles and operators subject to the Federal Motor Carrier Safety Regulations as adopted by reference by these rules.

Any commercial motor vehicle, as defined at 49 C.F.R. 390.5, operating in interstate commerce is currently subject to the Federal Motor Carrier Safety Regulations. A commercial motor vehicle operating in interstate commerce, as defined by the Federal regulations, includes:

"... any self-propelled or towed vehicle used on public highways in interstate commerce to transport passengers or property when:

(a) The vehicle has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds; or

(b) The vehicle is designed to transport more than 15 passengers, including the driver; or

(c) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary (of Transportation) under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1813)."

Not included within the above definition of commercial motor vehicles operating in interstate commerce are those vehicles and operators of vehicles specifically exempted at 49 C.F.R. §390.3(f).

Those motor vehicles (commercial or non-commercial) operating in interstate or intrastate commerce, which transport hazardous material(s) in a quantity requiring hazardous material(s) placarding are not only subject to the Federal Motor Carrier Safety Regulations as proposed in this readoption with amendments, but are also subject to those same Federal regulations under the rules adopted by the Commissioner at N.J.A.C. 16:49, more particularly 49 C.F.R. §177.804.

The regulation of commercial motor vehicles operating in intrastate commerce, or used wholly within a municipality or a municipality's commercial zone, under this proposed readoption with amendments will become subject to the Federal Motor Carrier Safety Regulations. For the purposes of this proposed readoption with amendments, however, the definition of an intrastate commercial motor vehicle will be different from the Federal definition as found at 49 C.F.R. §390.5. A commercial motor vehicle operating in intrastate commerce, provided it is **not** transporting hazardous material(s) in a quantity requiring hazardous material(s) placarding, or is displaying a hazardous material(s) placard, is defined as:

"... a motor vehicle or combination of motor vehicles used or designed to transport passengers or property in intrastate commerce:

(a) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or displays a gross vehicle weight rating of 26,001 or more pounds;

(b) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(c) If the vehicle is designed to transport 16 or more passengers including the driver;

(d) If the vehicle is designed to transport 8 or more but less than 16 persons, including the driver, and is used to transport such persons for hire on a daily basis to and from places of employment; or

(e) If the vehicle is transporting or used in the transportation of hazardous material(s) and is required to be placarded in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard."

The source of this definition is found in the Commercial Driver License (CDL) Act (P.L. 1990, c.103) at N.J.S.A. 39:3-10.11, definition of commercial motor vehicle.

"Farm vehicles registered pursuant to R.S. 39:3-24 and R.S. 39:3-25." are a specific category of vehicle exempted by the Legislature from the above intrastate commercial motor vehicle definition. N.J.S.A. 39:5B-32b(2).

Certain vehicles will not be subject to the Federal Motor Carrier Safety Regulations under this proposed readoption with amendments, provided they operate exclusively in intrastate commerce, or are used wholly within a municipality or a municipality's commercial zone, and are commercial motor vehicles with a gross vehicle weight rating or gross combination weight rating of 26,000 pounds <u>or less</u>. If a vehicle, included within this group, is transporting hazardous material(s) in a quantity <u>not</u> requiring hazardous material(s) placarding, then it too will be exempt from the Federal Motor Carrier Safety Rgulations, but it will be subject to the applicable provisions of N.J.A.C. 16:49 concerning labeling, shipping papers, etc. See generally, 49 C.F.R. Parts 171 through 176, and 178 through 180 at N.J.A.C. 16:49, Appendix.

The proposed readoption with amendments are summarized as follows.

1. The Federal Motor Carrier Safety Regulations, 49 C.F.R. Parts 390 through 397, of Title 49 of the Code of Federal Regulations, revised edition, October 1, 1992 will be readopted.

2. The following sections of Parts 390 through 397 are omitted from the regulations to be readopted: Sections 391.69, 393.81, and 397.3.

3. The following sections of Parts 390 through 397 are revised: 390.5, 391.49(a), 391.71(a) and (b), and 391.85. (A more detailed description of the revisions follows in this Summary.)

4. The following sections of Parts 390 through 393 and 395 through 397 are modified: Sections 390.21, 390.23, 391.11, 391.21, 391.23, 391.31, 391.35, 391.41, 391.61, and 391.93. (A more detailed description of the modifications follows in this Summary.)

5. A modification is made for all of the sections in Part 394. (A more detailed description of the modification follows in this Summary.)

6. The following Subparts, sections and appendices are added: Subparts B through E (inclusive) in Part 397; Sections 390.15-390.17, 390.25, 390.29, 391.3, 391.5, 391.7, 391.89, 393.17, 393.85, 395.1, 395.7, 395.10, 395.11, 395.12, 396.25, 397.101, 397.103, and 397.201-397.225 (inclusive); Appendix D to Subchapter B—Table of Disqualifying Drugs and Other Substances, Schedule I; Appendix E to Subchapter B—Tables of Disqualifying Drugs and Other Substances, Schedules II through V; Appendix F to Subchapter B—Commercial Zones, Sections 1, 6, 11, 12, 43, and 44; and Appendix G to Subchapter B—Minimum Periodic Inspection Standards. (A more detailed description of these additions follows in this Summary.)

Below is a review of the sections omitted from these rules as proposed.

Section 391.69 continues to be omitted. This section only pertains to drivers operating in the State of Hawaii.

Section 393.81 continues to be omitted. Title 39 of the Revised Statutes of New Jersey, Motor Vehicles and Traffic Regulations, will be applied.

Section 397.3 was omitted because New Jersey motor vehicle law under Title 39 will be utilized.

Below is a review of the revisions proposed herein:

Section 390.5 and 391.85 are revised to create a specific definition for "Commercial Motor Vehicle-Intrastate Commerce" by adopting the definition of "commercial motor vehicle" as found in the CDL Act at N.J.S.A. 39:3-10.11.

Section 391.49(a) continues as originally revised. A person with certain physical defects, if granted a waiver under the provisions of this section, can continue to operate a motor vehicle. Technical corrections are also included.

Section 391.71(a) and (b) continue as originally revised, subject to amendments that will insure that persons within the identified groups possess a valid New Jersey commercial driver's license (CDL) pursuant to N.J.S.A. 39:3-10.9 et seq. These revisions are intended to substantially agree with the adoption, by the Commissioner, of the Federal Hazardous Materials Regulations, 49 C.F.R. Parts 100 to 199 at N.J.A.C. 16:49. This revision is also amended to conform to technical changes in the Code of Federal Regulations.

Below is a review of the modifications proposed herein:

Section 390.21 is modified. The modification requires a commercial motor vehicle operating in intrastate commerce to comply with the provisions of N.J.S.A. 39:4-46 for the marking of vehicles.

Section 390.23 is modified. Certain commercial motor vehicles operated in intrastrate commerce are exempt from this section, provided they are operating during an emergency affecting the citizens of this State.

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Sections 391.11, 391.21, 391.23, 391.31, 391.35, and 391.61 are modified. A driver who holds a valid New Jersey Commercial Driver License (CDL), as of September 20, 1993, and who is engaged in the operation of a motor vehicle in intrastate commerce, but not transporting hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Federal Hazardous Materials Regulations (49 C.F.R. §172.500), is exempt from the requirements of these Sections.

Section 391.41 is modified. A driver who holds a valid New Jersey Commercial Driver License (CDL), as of September 20, 1993, and who is engaged in the operation of a motor vehicle in intrastate commerce, but not transporting hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Federal Hazardous Materials Regulations (49 C.F.R. §172.500), is exempt from the requirement of Section 391.41(b).

Section 391.93 is modified. This section requires motor carriers operating in intrastate commerce to conform to the Federal requirements for a controlled substance testing program for "drivers subject to testing" no later than July 1, 1994, and requires random and "non-suspicious based post-accident testing" pursuant to Section 391.93(d) not later than December 31, 1994.

Part 394 is modified. Motor carriers engaged in intrastate commerce are exempt from the requirements of this Part. Title 39 of the Revised Statutes of New Jersey, Motor Vehicles and Traffic Regulations, will apply to motor carriers engaged in intrastate commerce.

The above described proposed readoption with amendments is, to the extent possible, identical to the concurrent provisions found in the amendments to N.J.A.C. 16:49-1.3, 1.5, 2.1 and Appendix, adopted by the Commissioner at 25 N.J.R. 2497(a), June 7, 1993. By proposing essentially identical language for the Federal Motor Carrier Safety Regulations, the potential for confusion within the regulated industry and the law enforcement community concerning which Federal regulations are in effect and will be enforced is eliminated.

Although the Commissioner has adopted the same regulations pertaining to Motor Carrier Safety, the within readoption with amendments fulfills the legislative mandate on the Superintendent to "revise and readopt" the rules and regulations previously adopted pursuant to N.J.S.A. 39:5B-32a. This proposed readoption with amendments will broaden the scope of enforcement of the Federal Motor Carrier Safety Regulations to all motor carriers and operators of vehicle engaged in interstate or intrastate commerce.

This readoption with amendments also contains amendatory language to reflect changes in the citations to Title 49 of the United States Code. The 1985 authorizing legislation (P.L. 1985, c.415) makes reference to 49 U.S.C., but that Title has been revised and is now referred to as 49 App. U.S.C. Additional changes have been made to correct editorial revisions and errors and typographic errors.

Social Impact

This proposed readoption and amendments impact motor carriers, motor carrier operators, and persons operating commercial motor vehicles in intrastate and interstate commerce, in that they will be required to comply with, and be knowledgeable of, current Federal Motor Carrier Safety Regulations as found at 49 C.F.R. Parts 390 through 397, inclusive, and the Appendices to those Federal regulations as found in the Code of Federal Regulations, revised as of October 1, 1992. Adoption of these Federal regulations does not impose any new burden on those operating in interstate commerce or transporting hazardous material(s) in interstate or intrastate commerce in quantities requiring hazardous material(s) placarding as they are already subject to these Federal regulations. Motor carriers, motor carrier operators, and persons operating commercial motor vehicles in intrastate commerce will be required to comply with most Federal Motor Carrier Safety Regulations. Appropriate omissions, revisions, and modifications have been made for this category which do not impose a risk to the public.

Compliance with the Federal Motor Carrier Safety Regulations will benefit the motor carrier industry and the general public in that all commercial motor vehicles covered by these regulations will be subject to the same uniform rules and regulations concerning safety of equipment, operator requirements, and traffic rules and regulations.

Economic Impact

This proposed readoption with amendments will have no significant economic impact on motor carriers, motor carrier operators or persons operating commercial motor vehicles in interstate and intrastate commerce since the readoption with amendments only involve changes necessary to make the New Jersey Motor Carrier Safety Regulations, adopted pursuant to N.J.S.A. 39:5B-32, consistent with Federal regulations pertaining to Motor Carrier Safety. Motor carriers, motor carrier operators, and persons operating commercial motor vehicles in interstate commerce are already required to comply with the Federal Motor Carrier Safety Regulations. Motor carriers, motor carrier operators, and persons operating commercial motor vehicles transporting hazardous material(s) in interstate or intrastate commerce in quantities requiring hazardous material(s) placarding already are required with the Federal Motor Carrier Safety Regulations and the Federal Hazardous Materials Regulations. For those motor carriers, motor carrier operators, and persons operating commercial motor vehicles in interstate commerce there will be some economic impact related to recordkeeping, driver qualifications and testing for drugs and/or alcohol. Those additional costs are viewed as appropriate to assure greater public safety as it pertains to the operation of any commercial motor vehicles in this State. There will be no impact on the Division of State Police or other governmental agencies as the operational costs of enforcing these rules has already been considered in the agencies' budgets.

Regulatory Flexibility Analysis

The proposed readoption with amendments will impose reporting, recordkeeping and compliance requirements on motor carriers and their personnel if they are involved in interstate or intrastate commerce and are operating a vehicle or commercial motor vehicle within the applicable definitions. Motor carriers, motor carrier operators and their personnel and operators of vehicles which transport, in interstate or intrastate commerce, hazardous material(s) in quantities requiring hazardous material(s) placarding will also be subject to reporting, recordkeeping and compliance requirements. An undetermined number of the entities affected by this readoption with amendments may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14b-16 et seq. No differentiation in requirements or exemptions can be afforded such businesses due to the Federally mandated nature of the regulations and their legislative objective to protect the health and safety of the public.

The proposed readoption with amendments will continue to impose additional recordkeeping, reporting and other requirements on motor carriers and drivers operating in intrastate commerce who are engaged in the transportation and retail delivery service of combustible liquids as defined in the Hazardous Materials Regulations at 49 C.F.R. §173.115. These additional requirements apply only to drivers hired after January 1, 1991. Although small businesses, as the term is defined in N.J.S.A. 52:14b-16 et seq., will be subject to greater recordkeeping, reporting, and other requirements resulting from the adoption of this readoption with amendments, it is the opinion of the Superintendent that these requirements are necessary to promote the desired uniformity with Federal law. The continuation of the waiver procedure for certain types of physical defects will not impose any additional reporting or recordkeeping procedures. The requirement related to reporting should not create additional costs for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:60.

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

13:60-1.1 Purpose

This chapter **and appendix** establishes rules and regulations concerning the qualifications of motor carrier operators and vehicles **engaged in interstate or intrastate commerce or used or operated wholly within a municipality or a municipality's commercial zone**, which substantially conform[s] to the requirements established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982,"[,] Pub. L. 97-424 (49 [App.] U.S.C. **App. §§2301-2304) and the Federal "Motor Carrier Safety Act," Pub. L. 98-554 (49 U.S.C. App. §2501 et seq.)**, by adopting the "Federal Motor Carrier Safety Regulations" as adopted at **Title** 49 [C.F.R.], **Code of Federal Regulations**, Parts 390 through 397 **(49 C.F.R. Parts 390 through 397) and Appendices D, E, F, and G to Subchapter B—Federal Motor Carrier Safety Regulations at Title 49, Code of Federal Regulations, Chapter III (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G).**

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13:60-1.2 Application

[(a) This chapter shall apply to:]

[1. Every] **(a) The provisions of this chapter and appendix are applicable to every** motor carrier and every person, including drivers, agents, employees and representatives, involved or in any manner related to:

1. [the intrastate] **The** transportation **in a commercial motor vehicle of any cargo in interstate or intrastate commerce** [of hazardous materials as defined in the statute (N.J.S.A. 39:5B-25, et seq.), or the transportation of any other cargo or];

2. The operation of a **commercial motor** vehicle, **with or without a cargo, in interstate or intrastate commerce or wholly within a municipality or a municipality's commercial zone;** [in interstate commerce shall comply with and be bound by these rules and regulations and all amendments and supplements thereto, and shall take such measures as are necessary to insure compliance therewith.]

3. The transportation in any motor vehicle in intrastate commerce of materials determined by the Secretary of the United States Department of Transportation to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.) and which materials are transported in a quantity requiring hazardous material(s) placarding under Federal Hazardous Materials Regulations (49 C.F.R. Parts 171, 172, 173, 174, 177, 178, 179, and 180);

4. The operation of a commercial motor vehicle, with or without a cargo, displaying hazardous material(s) placarding in intrastate commerce or wholly within a municipality or a municipality's commercial zone;

5. The transportation in a commercial motor vehicle, as defined at N.J.S.A. 39:3-10.11, subsections a, b, c, and d, in intrastate commerce of any non-hazardous material(s) cargo;

6. Subject to any prevailing requirements of paragraph 3. of this subsection, the operation of a commercial motor vehicle, as defined at N.J.S.A. 39:3-10.11, subsections a, b, c, and d, in intrastate commerce or wholly within a municipality or a municipality's commercial zone.

[2.]**(b)** All officers, agents, representatives, drivers and employees of motor carriers involved or concerned with the management, maintenance, operation or driving of **any motor vehicle or** vehicles, subject to these regulations, shall be conversant and knowledgeable with the rules and regulations set forth in this chapter **and appendix.**

(c) The provisions of this chapter and appendix shall not apply to a farm vehicle registered in this State pursuant to the provisions of N.J.S.A. 39:3-24 and 39:3-25, provided the farm vehicle is operating:

1. In intrastate commerce;

2. Is used or operated wholly within a municipality or a municipality's commercial zone;

3. Is not transporting hazardous material(s) in a quantity requiring hazardous material(s) placarding; and

4. Is not displaying hazardous material(s) placarding.

13:60-1.3 [General] **Definitions and general** requirements

(a) For the purposes of this chapter and appendix, and unless another definition is specified, the terms set forth below are defined as follows:

"Hazardous material(s)" shall mean materials determined by the Secretary of the United States Department of Transportation to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.) and are transported in a quantity requiring hazardous material(s) placarding under Federal Hazardous Materials Regulations as adopted by the Commissioner of Transportation at N.J.A.C. 16:49.

"Interstate commerce" shall mean trade, traffic, or transportation in the United States which is between a place in this State and a place outside of this State (including a place outside of the United States) or is between any two other places (including a place outside of the United States) passing through this State.

"Intrastate commerce" shall mean trade, traffic, or transportation in this State which is not "interstate commerce".

(b) Throughout this chapter and appendix there are references to rules and regulations adopted by the Secretary of Transportation of the United States of America or the Commissioner of Transportation of the State of New Jersey. For convenience, those rules and regulations may be cited in this chapter and appendix in one or all of the following forms:

1. "Federal Motor Carrier Safety Regulations":

i. Code of Federal Regulations, Parts 390 through 397, Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49;

ii. 49 C.F.R. Parts 390 through 397 (inclusive);

iii. 49 C.F.R. Part(s), Section(s), §, or §§; or

iv. Federal Motor Carrier Safety Regulations;

2. "Appendix or Appendices to Federal Motor Carrier Safety Regulations":

i. Code of Federal Regulations, Appendix or Appendices to Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49, or

ii. 49 C.F.R. Ch. III, Subch. B, App.;

iii. Appendix to Subchapter B;

iv. Appendix or Appendices to Federal Motor Carrier Safety Regulations;

3. "Hazardous Materials Regulations":

i. Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178, 179, 180, Subchapter C—Hazardous Materials Regulations, Chapter I—Research and Special Programs Administration, U.S. Department of Transportation, Title 49;

ii. 49 C.F.R. Parts 171, 172, 173, 174, 177, 178, 179, 180; or

iii. Hazardous Materials Regulations.

[(a)]**(c)** This chapter establishes minimum standards of compliance concerning the qualifications of motor carrier operators and vehicles, operating in this [state] **State** in interstate **or intrastate** commerce or [operating in this state transporting hazardous materials in intrastate commerce] **used or operated wholly within a municipality or a municipality's commercial zone.** Therefore, in the event of a conflict between this chapter **and appendix** and any other State regulation, except as otherwise provided by statute or law, the stricter, more stringent standard shall apply and govern.

[(b)]**(d)** Whenever the term "interstate" is used in the Federal regulations adopted herein it shall, for the purpose of [those] **these** regulations, mean or include both "interstate" **and "intrastate"** transportation in commerce and ["intrastate" transportation of hazardous materials in commerce] **those vehicles used or operated wholly within a municipality or a municipality's commercial zone** except where stated otherwise.

[(c)]**(e)** If any section, subsection, clause or provision of this chapter **and appendix** shall be adjudged unconstitutional or to be ineffective or invalid in whole or in part, to the extent that it is not adjudged unconstitutional or is not ineffective or is not invalid, it shall be valid and effective and no other section, subsection, clause or provision of this chapter **and appendix** shall, on account thereof, be deemed unconstitutional, invalid or ineffective, and the inapplicability or invalidity of any section, subsection, clause or provision of this chapter **and appendix** in any one or more instances or under any one or more circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance or under any other circumstance. To this end, the provisions of this regulation are declared to be severable.

[(d)]**(f)** [This] **As new Federal publications reflecting amendments to 49 C.F.R. Parts 390-397 or 49 C.F.R. Ch. III, Subch. B, App. D, E, F, or G become available, this** chapter **and appendix** may be amended [from time to time] by the Superintendent of State Police, **in consultation with the Division of Motor Vehicles and the Department of Transportation pursuant to the provisions of N.J.S.A. 39:5B-32b.** [The "Federal Motor Carrier Safety Regulations" referenced herein are those adopted by the Secretary of Transportation as of October 1, 1989. The Superintendent of State Police intends to amend these regulations as new Federal publications become available.]

[(e)]**(g)** The provisions and requirements of these regulations as well as the Federal regulations adopted herein by reference, and

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made a part hereof as if set forth in full, are applicable to all **motor vehicles, as defined in this chapter and appendix, engaged in** transportation in interstate **and intrastate** commerce **or operating in interstate and intrastate commerce or used or operated wholly within a municipality or a municipality's commercial zone** as well as all **motor vehicles engaged in** transportation of hazardous [materials in intrastate commerce] **material(s) in a quantity requiring hazardous material(s) placarding** unless specifically stated otherwise.

13:60-1.4 Penalty for violation

(a) The penalties for violation of these regulations, including the Federal regulations incorporated by reference in N.J.A.C. 13:60-2 and herein, shall be enforced under the provisions of [P.L. 1985, c.415, Sec. 5, (]N.J.S.A. 39:5B-29[)].

(b) Each violation shall be treated separately. When the violation is a continuing one, each day of the violation constitutes a separate offense.

13:60-1.5 Document availability

(a) Copies of the "Federal Motor Carrier Safety Regulations" [Title 49, Code of Federal Regulations, Parts 390 through 397] **(49 C.F.R. Parts 390-397) and "Appendices to Federal Motor Carrier Safety Regulations" (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G)**, revised as of October 1, [1989] **1992**, and referenced **and adopted** herein, may be purchased from the sources listed below.

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
(202) [264-3238] **783-3238**

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, N.Y. 10278-0081
(212) 264-3825

U.S. Government Printing Office Bookstore
Room 1214, Federal Building
600 Arch Street
Philadelphia, Pa. 19106
(215) 597-0677

(b) Copies of [Title 49, Code of Federal Regulations, Parts 390 to 397] **"Federal Motor Carrier Safety Regulations" (49 C.F.R. Parts 390-397) and "Appendices to Federal Motor Carrier Safety Regulations" (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G)**, revised as of October 1, [1989] **1992**, and referenced and adopted herein are [also] available for review at the following public libraries:

New Jersey State Library
185 West State Street
Trenton, N.J. 08625
(609) 292-6220

Newark Public Library
5 Washington Street
Newark, N.J. 07101
(201) 733-7882

Jersey City Public Library
U.S. Government Documents Section
472 Jersey Avenue
Jersey City, N.J. 07304
(201) 547-4517

New Brunswick Public Library
60 Livingston Avenue
New Brunswick, N.J. 08901
(908) 745-5108

Trenton Public Library
120 Academy Street
Trenton, N.J. 08608
(609) 392-7188

Camden County Public Library
Laurel Road
Voorhees, N.J. 08043
(609) 772-1636

Cherry Hill Public Library
1100 Kings Highway, North
Cherry Hill, N.J. 08034
(609) 667-0300

(c) Copies of [Title 49, Code of Federal Regulations, Parts 390 to 397] **"Federal Motor Carrier Safety Regulations" (49 C.F.R. Parts 390-397) and "Appendices to Federal Motor Carrier Safety Regulations" (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G)**, revised as of October 1, [1989] **1992**, and referenced and adopted herein are [further] available for review**, during regular business hours,** at [the Division of State Police, Office of Hazardous Materials Transportation, Compliance and Enforcement, River Road, P.O. Box 7068, West Trenton, New Jersey 08625.]**:**

Division of State Police
Division Headquarters
Office of Hazardous Materials Transportation,
Compliance and Enforcement
River Road, P.O. Box 7068
West Trenton, New Jersey 08628-0068

Regular business hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. The telephone number is (609) 882-2000, extension [2581 or] 2582 **or 2586**.

13:60-1.6 Assistance

For general assistance and procedural questions in matters related to the "Federal Motor Carrier Safety Regulations" **and "Appendices to Federal Motor Carrier Safety Regulations"**, as adopted herein, contact:

Bureau of Motor Carrier Safety
Federal Highway Administration
U.S. Department of Transportation
25 Scotch Road, Second Floor
Trenton, N.J. 08625
(609) 989-2276

For assistance in matters related to enforcement of the regulations adopted herein, contact:

Office of Hazardous Materials Transportation
Compliance and Enforcement
New Jersey Division of State Police
Division Headquarters
River Road, P.O. Box 7068
West Trenton, N.J. [08625] **08628-0068**
(609) 882-2000, extension [2581 or] 2582 **or 2586**

Note, however, statements or opinions provided by the Division of State Police do not constitute legal advice.

13:60-2.1 [Parts] **Code of Federal Regulations, Parts and Appendices** adopted by reference

(a) The Superintendent of the Division of State Police, pursuant to [P.L. 1985, c.415, (]N.J.S.A. 39:5B-32[)], hereby incorporates, by reference, the following portions of the Code of Federal Regulations **:**[, Title 49—Transportation, Subchapter B—The Federal Motor Carrier Safety Regulations,] Parts 390 through 397, **Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49—Transportation,** inclusive, (excluding Sections 391.69, 393.81 and 397.3) revised as of October 1, [1989] **1992**, (49 C.F.R., Parts 390 through 397, inclusive)**; and Appendices D, E, F, and G to Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49—Transportation, revised as of October 1, 1992, (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G)**. [The parts adopted by reference are found in Chapter III, referred to as "Federal Highway Administration, Department of Transportation", Subchapter B—Federal Motor Carrier Safety Regulations.] These [parts] **Parts and Appendices** are detailed in the Appendix to the **within** Regulations regarding [the] Motor Carrier Safety Regulations.

(b) The [portions] **Parts and Appendices** adopted are summarized below.

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1. Part 390, Federal Motor Carrier Safety Regulations: General. **(A revision is made to Section 390.5; and modifications are made to Sections 390.21 and 390.23.)**

2. Part 391, Qualifications of Drivers. (Section 391.69 is omitted;[.] **revisions** [Modifications] are made to Sections 391.49(a), [and] 391.71**(a) and (b), and 391.85; and modifications are made to Sections 391.11, 391.21, 391.23, 391.31, 391.35, 391.41, 391.61 and 391.93.)**

3. Part 392, Driving of Motor Vehicles.

4. Part 393, Parts and Accessories Necessary for Safe Operation. (Section 393.81 is omitted.)

5. Part 394, Notification and Reporting of Accidents. **(A modification is made to this Part.)**

6. Part 395, Hours of Service of Drivers.

7. Part 396, Inspection, Repair, and Maintenance.

8. Part 397, Transportation of Hazardous Materials: Driving and Parking Rules. (Section 397.3 is omitted; **and new Subparts are included.)**

9. Appendix D to Subchapter B—Table of Disqualifying Drugs and Other Substances, Schedule I.

10. Appendix E to Subchapter B—Tables of Disqualifying Drugs and Other Substances, Schedules II through V.

11. Appendix F to Subchapter B—Commercial Zones, Sections 1, 6, 11, 12, 43, and 44.

12. Appendix G to Subchapter B—Minimum Periodic Inspection Standards.

APPENDIX TO THE REGULATIONS REGARDING [THE] MOTOR CARRIER SAFETY REGULATIONS

This Appendix to the regulations regarding [the] Motor Carrier Safety Regulations details the adopted portions of Title 49, [C.F.R.] **Code of Federal Regulations**, by [section] **Part, Subpart, Section, or Appendix.** All [sections] **Parts, Subparts, Sections, or Appendices** are listed by **letter or** number and **by** title to identify content for the reader. [Detailed] **Exceptions, revisions, or** modifications are stated within the appropriate [section] **Parts, Sections, or Appendices. Omitted sections are identified with the notation "(This Section intentionally omitted.)"**

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Subpart A—General Applicability and Definitions

Section 390.1 Purpose.
Section 390.3 General Applicability.
Section 390.5 Definitions.

(Section 390.5 is revised to state the following:)

"Commercial Motor Vehicle—Intrastate Commerce" means a motor vehicle or combination of motor vehicles used or designed to transport passengers or property in intrastate commerce:

(a) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or displays a gross vehicle weight rating of 26,001 or more pounds;

(b) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(c) If the vehicle is designed to transport 16 or more passengers including the driver;

(d) If the vehicle is designed to transport 8 or more but less than 16 persons, including the driver, and is used to transport such persons for hire on a daily basis to and from places of employment; or

(e) If the vehicle is transporting or used in the transportation of hazardous material(s) and is required to be placarded in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 390.7 Rules of Construction.

Subpart B—General Requirements and Information

Section 390.9 State and local [law] **laws,** effect on.
Section 390.11 Motor carrier to require observance of driver regulations.
Section 390.13 Aiding or abetting violations.
Section 390.15-390.17 (Reserved)
Section 390.19 Additional equipment and accessories.
Section 390.21 Marking of **commercial** motor vehicles.

(Section 390.21 is modified to state the following:)

A commercial motor vehicle operated in intrastate commerce shall be subject to the provisions of N.J.S.A. 39:4-46.

Section 390.23 Relief from [hours-of-service regulations-disasters] **regulations.**

(Section 390.23 is modified to state the following:)

The following commercial motor vehicles, operating in intrastate commerce, are exempt from this section when any emergency occurs that affects the citizens of New Jersey.

(a) Commercial motor vehicles which are owned, operated, or leased by a public or quasi-public or private entity in this State, said entity being subject to the jurisdiction of the Board of Regulatory Commissioners; or

(b) Commercial motor vehicles which are owned, operated or leased by a public, quasi-public or private entity in this State and which are or will be operated under a contract to the State of New Jersey or a governmental or quasi-governmental entity thereof.

Such emergencies include, but are not limited to, weather and other acts of nature (e.g., snow, flooding, earthquake, power/telephone outages, disruptions to power or telephone transmission lines or facilities, supply lines or facilities for steam, water, or gas) and other emergencies (e.g., motor vehicle accidents, industrial accidents, fires, etc.)

Section 390.25 Extension of relief from regulations—emergencies.
Section 390.27 Locations of regional motor carrier safety offices.
Section 390.29 (Reserved)
Section 390.31 Copies of records or documents.
Section 390.33 Vehicles used for purposes other than defined.
Section 390.35 Certificates, reports, and records: falsification, reproduction, or alteration.
Section 390.37 Violation and penalty.

PART 391 QUALIFICATIONS OF DRIVERS

Subpart A—General

Section 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.
Section 391.2 General exemptions.
Section 391.3 (Reserved)
Section 391.5 (Reserved)
Section 391.7 (Reserved)

Subpart B—Qualifications and Disqualifications of Drivers

Section 391.11 Qualifications of drivers.

(Section 391.11 is modified to state the following:)

The provisions of Section 391.11(b)(1) do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.15 Disqualification of drivers.

Subpart C—Background and Character

Section 391.21 Application for employment [as specified in this Section 391.21 are not required for persons already employed by same carrier as of March 4, 1985].

(Section 391.21 is modified to state the following:)

The provisions of Section 391.21 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Com-

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mercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.23 Investigation and inquiries. [Section 391.23 shall apply to drivers hired after March 4, 1985.]

(Section 391.23 is modified to state the following:)

The provisions of Section 391.23 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.25 Annual review of driving record.

Section 391.27 Record of violations.

Subpart D—Examinations and Tests

Section 391.31 Road test.

(Section 391.31 is modified to state the following:)

The provisions of Section 391.31 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.33 Equivalent of road test.

Section 391.35 Written examination.

(Section 391.35 is modified to state the following:)

The provisions of Section 391.35 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.37 Equivalent of written examinations.

Subpart E—Physical Qualifications and Examinations

Section 391.41 Physical qualifications for drivers.

(Section 391.41 is modified to state the following:)

A driver engaged in intrastate commerce, excluding the transportation of hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard, who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, but who is not physically qualified to drive under Section 391.41(b) of this Subchapter may continue to drive a motor vehicle.

Section 391.43 Medical examination; certificate of physical examinations.

Section 391.45 Persons who must be medically examined and certified.

Section 391.47 Resolution of conflicts of medical evaluation.

Section 391.49 Waiver of certain physical defects.

(Section 391.49 is revised to state the following:)

(a) A person who is not physically qualified to drive under Section 391.41(b)(1) or (2), and who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle, if that person has been granted a waiver pursuant to [49, Code of Federal Regulations, Section 391.49] **this section, (49 C.F.R. §391.49).**

Subpart F—Files and Records

Section 391.51 Driver qualification files.

Subpart G—Limited Exemptions

Section 391.61 Drivers who were regularly employed before January 1, 1971.

(Section 391.61 is modified to state the following:)

The provisions of Section 391.61 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. 172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.62 (Reserved).

Section 391.63 Intermittent, casual, or occasional drivers.

Section 391.65 Drivers furnished by other motor carriers.

Section 391.67 Drivers of articulated (combination) farm vehicles.

Section 391.69 Drivers operating in Hawaii. (This Section intentionally omitted.)

Section 391.71 Intrastate drivers of vehicles transporting combustible liquids.

(Section 391.71(a) and (b) are revised to state the following:)

(a) The provisions of Section 391.11(b) (relating to minimum age), Section 391.21 (relating to application for employment), Section 391.23 (relating to investigations and inquiries), Section 391.31 (relating to road test), and Section 391.35 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in Section 390.5 of [this subchapter] **these regulations** as of January 1, 1991, **and who possesses a valid New Jersey commercial driver's license (CDL),** and continues to be a regularly employed driver of that motor carrier and who drives a motor vehicle that:

(1) Is transporting combustible liquids [(]as defined in [Title 49, Code of Federal Regulations, Section 173.115)] **the Hazardous Materials Regulations (49 C.F.R. §173.120(b))**, and

(2) Is being operated in intrastate commerce.

(b) In addition to the exemptions provided in paragraph (a) of this section, a person who has been a regularly employed driver (as defined in Section 390.5 of [this subchapter] **these regulations** as of January 1, 1991, but who is not physically qualified to drive under Section 391.41(b) of [this subchapter] **these regulations** and who is otherwise qualified under N.J.S.A. [39:3-10] **39:3-10.9 et seq.** to drive a motor vehicle, may continue to drive a motor vehicle provided that person is in possession of a valid New Jersey [driver] **driver's** license issued prior to January 1, 1991, and continues to be a regularly employed driver of that motor carrier and drives a vehicle that:

(1) Is a truck (as defined in Section 390.5 of [this subchapter] **these regulations**), and

(2) Is operated in retail delivery service, and

(3) Is transporting combustible liquids [(]as defined in [Title 49, Code of Federal Regulations, Section 173.115)] **the Hazardous Materials Regulations (49 C.F.R. §173.120(b))**, and

(4) Is operated in intrastate commerce.

Subpart H—Controlled Substances Testing

Section 391.81 Purpose and scope.

Section 391.83 Applicability.

Section 391.85 Definitions.

(Section 391.85 is revised to state the following:)

Intrastate Commerce—"Commercial Motor Vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used or designed to transport passengers or property:

(a) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or displays a gross vehicle weight rating of 26,001 or more pounds;

(b) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(c) If the vehicle is designed to transport 16 or more passengers including the driver;

(d) If the vehicle is designed to transport 8 or more but less than 16 persons, including the driver, and is used to transport such persons for hire on a daily basis to and from places of employment; or

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(e) If the vehicle is transporting or used in the transportation of hazardous material(s) and is required to be placarded in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.87 Notification of test results and record keeping.
Section 391.89 Access to individual test results of test findings.
Section 391.93 Implementation schedule.
(Section 391.93 is modified to state the following:)
Motor carriers engaged in intrastate commerce, excluding motor carriers transporting hazardous material(s) requiring hazardous material(s) placarding, are required: (1) to implement a controlled substance testing program for "drivers subject to testing" which meets the requirements of this Subpart no later than July 1, 1994; (2) A random and "non-suspicious based post-accident testing" pursuant to subsection d. of this section no later than December 31, 1994.
Section 391.95-391.115 (No change.)
Section 391.117 Disqualification[s].
Sections 391.119-391.123 (No change.)

PART 392 DRIVING OF MOTOR VEHICLES

Subparts A-C (No change.)

Subpart D—Use of Lighted Lamps and Reflectors
Section 392.30 Lighted lamps; moving vehicles.
Section 392.31 Lighted lamps; stopped or parked vehicles.
Section 392.32 Upper and lower [head lamp] **head-lamp** beams.
Section 392.33 Obscured lamps or reflectors.

Subparts E-G (No change.)

PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Subpart A (No change.)

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment
Section 393.9 Lamps operable.
Section 393.11 Lighting devices and reflectors.
Section 393.17 Lamps and reflectors—combinations in driveaway-towaway operation.
Sections 393.19-393.33 (No change.)

Subparts C-F (No change.)

Subpart G—Miscellaneous Parts and Accessories
Sections 393.75-393.80 (No change.)
Section 393.81 Horn. (This Section intentionally omitted.)
Section 393.82 Speedometer.
Section 393.83 Exhausts system [location].
Section 393.84 Floors.
Section 393.85 (Reserved)
Sections 393.86-393.94 (No change.)

Subparts H-J (No change.)

PART 394 NOTIFICATION AND REPORTING OF ACCIDENTS

(The Sections in the Part are modified by the following:)
The provisions of Part 394 do not apply to motor carrier(s) engaged in intrastate commerce, except as otherwise provided herein. Motor carrier(s) engaged in the transportation of hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), are subject to, and required to comply with, the provisions of Part 394.
Sections 394.1-394.20 (No change.)

PART 395 HOURS OF SERVICE OF DRIVERS

Section 395.1 [(Reserved).] **Scope of rules in this part.**
Section 395.2 Definitions
Section 395.3 Maximum driving and on-duty time.
Section 395.7 [Travel time.] **(Reserved)**
Section 395.8 Driver's record of duty status.
Section 395.10 [Adverse driving and conditions.] **(Reserved)**
Section 395.11 [Emergency conditions.] **(Reserved)**
Section 395.12 [Relief from regulations.] **(Reserved)**
Section 395.13 Drivers declared out-of-service.
Section 395.15 Automatic on-board recording devices.

PART 396 INSPECTION, REPAIR AND MAINTENANCE

Sections 396.1-396.13 (No change.)
Section 396.15 Driveaway-towaway operations[,] **and** inspections.
Section 396.17 Periodic inspection[s].
Section 396.19 Inspector qualifications.
Section 396.21 Periodic inspection record keeping requirements.
Section 396.23 Equivalent to periodic inspection.
Section 396.25 Qualifications of brake inspectors.
[Appendix G to Subchapter B—Minimum Periodic Inspection Standards.]

PART 397 TRANSPORTATION OF HAZARDOUS MATERIALS[:]; DRIVING AND PARKING RULES

Section 397.1 Application of the rules in this part.
Section 397.2 Compliance with Federal motor carrier safety regulations.
Section 397.3 State and local laws, ordinances, and regulations. (This Section intentionally omitted.)
Sections 397.5-397.19 (No change.)

Subparts B-C (Reserved)

Subpart D—Routing of Class 7 (Radioactive) Materials
Section 397.101 Requirements for motor carriers and drivers.
Section 397.103 Requirements for State routing designations.

Subpart E—Preemption Procedures
Section 397.201 Purpose and scope of the procedures.
Section 397.203 Standards for determining preemption.
Section 397.205 Preemption application.
Section 397.207 Preemption notice.
Section 397.209 Preemption processing.
Section 397.211 Preemption determination.
Section 397.213 Waiver of preemption application.
Section 397.215 Waiver notice.
Section 397.217 Waiver processing.
Section 397.219 Waiver determination and order.
Section 397.221 Timeliness.
Section 397.223 Petition for reconsideration.
Section 397.225 Judicial review.

APPENDIX D TO SUBCHAPTER B—TABLE OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULE I.
APPENDIX E TO SUBCHAPTER B—TABLES OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULES II THROUGH V.

APPENDIX F TO SUBCHAPTER B—COMMERCIAL ZONES

Section 1 New York, N.Y.
Section 6 Philadelphia, Pa.
Section 11 Commercial zones of municipalities in New Jersey within 5 miles of New York, N.Y.
Section 12 Commercial zones of municipalities in Westchester and Nassau Counties, N.Y.
Section 43 Definitions.
Section 44 Commercial zones determined generally, with exceptions.

APPENDIX G TO SUBCHAPTER B—MINIMUM PERIODIC INSPECTION STANDARDS.

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(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Intent of Medication Rules

Proposed Amendment: N.J.A.C. 13:70-14A.1

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1993-137.

Submit written comments by August 18, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment clarifies the intent of the existing rule and expands upon it by, among other things, listing several prohibited drugs and/or substances and incorporating New Jersey Racing Commission ("Commission") "Directive No. 3-1990—Tubing of Horses."

N.J.A.C. 13:70-14A.1 presently prohibits horses participating in a race from carrying in their bodies any drug and/or substance which is foreign to the natural horse, irrespective of when administered or injected, excepting external rubs and innocuous compounds or as otherwise provided in the rules and regulations of the Commission.

The proposed amendment provdes that a drug and/or substance administered to a horse is foreign to the natural horse, and the horse is thus prohibited from carrying same in its body on race day, irrespective of the time of administration and regardless of whether the drug or substance is also naturally occurring to the horse. The amendment excludes innocuous compounds and external rubs which do not contain prohibited drugs and/or substances, as well as items otherwise permissible under the rules of the Commission. The proposed amendment to N.J.A.C. 13:70-14A.1 sets forth various of the prohibited drugs and/or substances. The amendment does not prohibit the horse from carrying in its body on the day of the race food products resulting from the normal and proper diet of a horse.

The proposed amendment further prohibits the race horse from having administered to it on the day of the race any drug and/or substance foreign to the natural horse except innocuous compounds, external rubs, Lasix, Phenylbutazone and as otherwise provided in the rules of the Commission. In addition, except as may be otherwise specifically authorized, the amendment prohibits on the day of the race said excepted items from being administered to the horse (Lasix, however, may be administered intravenously; Phenylbutazone may be administered intravenously or orally) except by application on the exterior of the horse. Food constituting the normal and proper diet of a horse may, however, on race day be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

Simultaneous with the proposed amendment to N.J.A.C. 13:70-14A.1, separate but related amendments are being proposed elsewhere in this issue of the New Jersey Register with regard to N.J.A.C. 13:70-14A.9, Administering medication to respiratory bleeders, N.J.A.C. 13:70-20.11, Limitations on entering or starting, and N.J.A.C. 13:70-21.4, Medication.

Social Impact

This proposed amendment would be beneficial to the integrity of the racing industry since it will serve to insure that horses participating in races in this State do so without prohibited foreign substances in their bodies. The foreign substances may result in enhanced performance to the race horse, a decrease in race performance and/or, among other things, effect the health of the horse and consequently the safe conduct and integrity of the race. The amendment is more specific and definite than that which it is intended to replace and, by incorporating the 1990 directive prohibiting the tubing of horses, addresses a growing concern within the racing industry regarding the administration of foreign substances to horses by use of a tube apparatus. The amendment additionally enhances enforcement efforts by limiting the method of administration of external rubs and innocuous compounds on the day of the race only.

It is anticipated that, although the majority of the horsemen will likely see the amendment as beneficial, some will be opposed. Those opposed will likely contend that the amendment prohibits the horse from carrying in its body on the day of the race, or having administered to it on race day, substances foreign to the natural horse which were considered by some horsemen to be acceptable under the rule as it currently exists.

Economic Impact

The proposed amendment prohibits the horse from carrying in its body on the day of the race, or having administered to it on race day, substances foreign to the natural horse which may have been considered by some horsemen to be acceptable under the rule as it currently exists. The amendment further limits the manner in which non-prohibited items may be administered to the horse on race day. In the event of non-compliance with the amended rule, actions consistent with the rules and regulations of the Commission which could have a monetary impact, might result. Those horses determined not to be in compliance prior to the start of the race might not be allowed to compete and a monetary loss in the form of lost entry fees, fees otherwise associated with the horses entry in the race and loss of potential purse monies could result. Those same economic effects might result where the horse is determined to be out of compliance with the rule following the race. Additionally, the person or persons responsible for the violation would be subject to sanction in the form of a fine, suspension of license or such other penalty consistent with the rules and regulations of the Commission.

Regulatory Flexibility Analysis

The compliance requirements of the proposed amendment implicate owners, trainers, veterinarians and others affiliated with conditioning a horse for participation in a race, some of whom would be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although the number of small businesses to which the rule would apply is not readily ascertainable, such entities would be required to comply with its requirements. As the amendment concerns limitations on what a horse may carry in its body and have administered to it on the day of the race, it would not result in identifiable expenses to such entities. Any expense to those entities and affiliated persons would result from the situation where a horse is determined not to be in compliance with the rule, as described above. The Commission is of the view that the objectives of the amendment to maximize the safe conduct and integrity of racing, require a consistent application of its terms to small businesses without regard to type or size.

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

13:70-14A.1 Intent of medication rules**; general provisions**

(a) It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. [No horse participating in a race shall carry in its body any drug and/or substance which is foreign to the natural horse, excepting external rubs and innocuous compounds as herein defined and as otherwise provided for in these rules and regulations irrespective of when administered or injected.] **For the purpose of these rules, a drug and/or substance administered to a horse is foreign to the natural horse irrespective of whether the said drug and/or substance is also naturally occurring to the horse.**

(b) On the day of the race, irrespective of the date, time and method of administration, no horse entered to start in or participating in any race shall carry in its body any drug and/or substance foreign to the natural horse, excepting external rubs and innocuous compounds as defined in this section and as otherwise provided for in these rules. Examples of drugs and/or substances foreign to the natural horse, and thus prohibited pursuant to this section, are as follows:

1. Articles meeting the definition of drug as set forth in N.J.A.C. 13:70-2.1;
2. Chemical substances;
3. Stimulants;
4. Depressants;
5. Anesthetics;
6. Tranquilizers;
7. Anti-inflammatories;
8. Erythropietin (epogen, EPO);
9. Pain killers;

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10. Sodium bicarbonate (baking soda);
11. Confectionery sugar;
12. Stamina builders; and
13. Mixtures, compounds or solutions commonly referred to as "milkshakes" which contain any prohibited drug and/or substance.

(c) Nothing contained in this section, however, shall be construed to prohibit the horse from carrying in its body on the day of the race food products resulting from the normal and proper diet of a horse.

(d) On the day of the race, except as otherwise provided for in these rules, no horse entered to start in or participating in any race shall have administered to it any such drug and/or substance foreign to the natural horse, including as a result of administration of an external rub or what would otherwise constitute an innocuous compound. In no event, except for the intravenous administration of furosemide (Lasix) pursuant to N.J.A.C. 13:70-14A.9, the intravenous or oral administration of phenylbutazone pursuant to N.J.A.C. 13:70-14A.9, or as may otherwise specifically be authorized by or pursuant to these rules, shall the administration of said excepted items be accomplished intravenously, by injection, by jugging or drenching, or through the use of a syringe or sharp, dose syringe, or tube apparatus. A non-prohibited external rub or innocuous compound shall on the day of the race be administered only by application on the exterior of the horse, except that food constituting the normal and proper diet of a horse may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

(e) An external rub or innocuous compound is a single substance, mixture of substances or compound which does not contain any of the 13 examples of prohibited items as set forth in (b) above, or additionally, any other substance foreign to the natural horse which alters its normal physiological state.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Administering Medication to Respiratory Bleeders
Proposed Amendment: N.J.A.C. 13:70-14A.9

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1993-366.

Submit written comments by August 18, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment concerns standards to be implemented for Phenylbutazone post-race testing. The amendment incorporates New Jersey Racing Commission ("Commission") "Directive No. 2—May 22, 1991," with modifications as discussed below.

"Directive No. 2—May 22, 1991" sets forth standards to be implemented for Phenylbutazone post-race horse testing. The directive authorizes the following actions dependent on the quantities of Phenylbutazone found as a result of post-race testing and the prior history of the offending trainer. For a post-race finding 0 to 2.5 micrograms per milliliter of Phenylbutazone, no action. For a finding of 2.6 to 3.0 micrograms per milliliter, the following action: first offense—$250.00 fine; second offense—$500.00 fine and seven days suspension; third offense—$500.00 fine, 15 days suspension and loss of purse. For a finding in excess of 3.0 micrograms per milliliter of Phenylbutazone, the following action: first offense—$500.00 fine and loss of purse; second offense—$500.00 fine, 15 days suspension and loss of purse; third offense—$500.00 fine, 30 days suspension and loss of purse. For a fourth or subsequent violation of either of these standards, the directive calls for the trainer to be subject to such fines and/or suspensions as the Racing Commission deems appropriate. The directive further provides that a suspension against a trainer shall be on his record for a two-year period of time and, two years from the date of the violation, the record of suspension is to be eliminated therefrom.

The proposed amendment is intended to codify the existing directive, and accomplish limited substantive changes. The proposed amendment, intended as an exception to N.J.A.C. 13:70-14A.1, authorizes the imposition of penalties upon the responsible persons as well as the trainer for violating its standards regarding the administration of Phenylbutazone. It further authorizes the administration of Phenylbutazone either orally or intravenously.

The proposed amendment sets forth action levels in excess of 2.5 to 3.0 micrograms per milliliter, and in excess of 3.0 micrograms per milliliter. A subsequent violation of either action level results in an increase of the potential penalties which may be imposed. However, where a violation of one action level occurs, followed by a violation within the parameters of the other action level, the offender will not be treated as a repeat offender. A violation will only subject the offending party to an enhanced potential penalty where the second or subsequent violation occurs within the same action level.

The proposed amendment sets forth the same penalties as the directive with two exceptions. For a third violation where the horse is determined to carry in its body above 2.5 micrograms per milliliter (up to 3.0 micrograms per milliliter) of Phenylbutazone, the comparable provision of the directive (2.6 to 3.0 micrograms per milliliter) allowed for penalties of a $500.00 fine, 15 days suspension and loss of purse. For a third violation where the horse is determined to carry in its body in excess of 3.0 micrograms per milliliter of Phenylbutazone, the directive allowed for a $500 fine, 30 days suspension and loss of purse. The proposed amendment would modify these penalties by authorizing the racing official to exercise discretion as to the length of suspension.

Additionally, the proposed amendment does not allow for the elimination of a record of offense after two years from the date of the violation.

Although the title of N.J.A.C. 13:70-14A.9 will be changed as a result of the instant proposal, the current substantive provisions of N.J.A.C. 13:70-14A.9 shall remain as they presently exist.

Social Impact

This proposed amendment to N.J.A.C. 13:70-14A.9 codifies, by regulation, the existing state of affairs with the exceptions noted in the Summary above. Although it is anticipated that most horsemen will favor the amendment, certain horsemen may disfavor the extension of possible liability to responsible persons other than the trainer, the noted modifications to the penalty provisions of the directive, and the failure of the proposed rule to provide for the elimination of violations from an offending party's violation record. The Commission is, however, of the view that the proposed amendment will have a positive effect in that it will promote the integrity of racing as well as the safe conduct of the sport and race participants.

Economic Impact

The proposed amendment sets forth a limited exception to N.J.A.C. 13:70-14A.1, by setting forth conditions under which a horse on the day of the race may carry in its body and have administered to it phenylbutazone. In the event of non-compliance with the amended rule, actions consistent with the amendment could have a monetary impact on the responsible trainer, owner, veterinarian or such other person. These potential penalties include fines, license suspensions and, as to the owner and trainer, possible loss of purse.

Regulatory Flexibility Analysis

The compliance requirements of the proposed amendment implicate owners, trainers, veterinarians and others affiliated with the conditioning of a horse for participation in a race, some of whom would be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although the number of small businesses affected by the amendment is not readily ascertainable, such entities would be required to comply with its requirements. As the amendment concerns limitations concerning phenylbutazone administration to race horses, it would not result in identifiable expenses to such entities. Any expense to those entities and responsible persons would result from the situation where a horse is determined not to be in compliance with the rule, as described above. The Commission is of the view that the objectives of the amendment require a consistent application of its terms to small businesses without regard to type or size.

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

13:70-14A.9 Administering medication to respiratory bleeders; **standards for the administration of phenylbutazone**

(a)-(e) (No change.)

(f) Notwithstanding anything to the contrary herein or in N.J.A.C. 13:70-14A.1, on the day of the race a horse may carry in its body and have administered to it, intravenously or orally, phenylbutazone in a quantity of 2.5 micrograms per milliliter or less as determined by post-race testing.

(g) Should the judges or stewards, as appropriate, determine that any trainer or persons have violated (f) above, they shall punish the offending party as follows:

1. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity above 2.5 micrograms per milliliter up to and including 3.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

i. First violation of N.J.A.C. 13:70-14A.9(g)1—$250.00 fine;

ii. Second violation of N.J.A.C. 13:70-14A.9(g)1—$500.00 fine and 7-days suspension;

iii. Third violation of N.J.A.C. 13:70-14A.9(g)1—$500.00 fine, loss of any purse and suspension; and

iv. Fourth or subsequent violation of N.J.A.C. 13:70-14A.9(g)1—such fines, suspensions and/or other penalties allowed by this chapter.

2. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity exceeding 3.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

i. First violation of N.J.A.C. 13:70-14A.9(g)2—$500.00 fine and loss of any purse;

ii. Second violation of N.J.A.C. 13:70-14A.9(g)2—$500.00 fine, loss of any purse and 15-days suspension;

iii. Third violation of N.J.A.C. 13:70-14A.9(g)2—$500.00 fine, loss of any purse and suspension; and

iv. Fourth or subsequent violation of N.J.A.C. 13:70-23.8(g)2—such fines, suspensions and/or other penalties allowed by this chapter.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Limitations on Entering or Starting
Proposed Amendment: N.J.A.C. 13:70-20.11

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

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

Proposal Number: PRN 1993-134.

Submit written comments by August 18, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment creates consistency in the regulations as a result of a proposed amendment to N.J.A.C. 13:70-14A.1, published elsewhere in this issue of the New Jersey Register.

The instant amendment to N.J.A.C. 13:70-20.11 would prohibit a trainer from entering or starting a horse that is not in compliance with N.J.A.C. 13:70-14A.1.

N.J.A.C. 13:70-20.11(a)3, in its present form, prohibits the trainer from entering or starting in a race a horse that has been given, internally or externally, any stimulant, depressant, local anesthetic, tranquilizer, anti-inflammatory or chemical of any kind or description, prior to the race. N.J.A.C. 13:70-20.11(a)4, among other things, presently prohibits the trainer from entering or starting in a race a horse that received medication excepting only external rubs and innocuous compounds, none of which may contain the substances prohibited under N.J.A.C. 13:70-20.11(a)3. The proposed amendment to N.J.A.C. 13:70-20.11 would instead prohibit the trainer from entering or starting in a race a horse which is not in compliance with N.J.A.C. 13:70-14A.1.

N.J.A.C. 13:70-14A.1 presently prohibits horses participating in a race from carrying in their bodies any drug and/or substance which is foreign to the natural horse except external rubs and innocuous compounds or as otherwise provided in the rules and regulations of the New Jersey Racing Commission ("Commission"), irrespective of when administered or injected.

The proposed amendment to N.J.A.C. 13:70-14A.1 provides that a drug and/or substance administered to a horse is foreign to the natural horse, and the horse is thus prohibited from carrying same in its body on race day irrespective of whether it is also naturally occurring to the horse. The proposed amendment to N.J.A.C. 13:70-14A.1 excludes innocuous compounds and external rubs which do not contain prohibited drugs and/or substances, as well as items otherwise permissible under the rules of the Commission. The proposed amendment to N.J.A.C. 13:70-14A.1 sets forth various prohibited drugs and/or substances.

The proposed amendment to N.J.A.C. 13:70-14A.1 further prohibits the race horse from having administered to it on the day of the race any drug and/or substance foreign to the natural horse except innocuous compounds, external rubs, Lasix, Phenylbutazone and as otherwise provided by the rules of the Commission. The excepted items, however, on the day of the race may only be administered on the exterior of the horse (Lasix may be administered intravenously, Phenylbutazone may be administered intravenously or orally) unless specifically provided otherwise by or pursuant to the rules of the Commission.

The proposed amendment to N.J.A.C. 13:70-14A.1 does not prohibit the horse from carrying in its body, on the day of the race, food products resulting from the normal and proper diet of a horse. On the day of the race, that proposed amendment provides that food constituting normal and proper diet of a horse may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

Social Impact

The proposed amendment to N.J.A.C. 13:70-20.11 would be beneficial to the integrity of the racing industry since it will serve to insure that horses participating in races in this State do so without foreign substances in their bodies.

The proposed amendment creates consistency between it and the proposed amendment to N.J.A.C. 13:70-14A.1. In view of the latter, and the instant amendment's reference thereto, some trainers may oppose the instant amendment. Although it is anticipated that most horsemen will favor this amendment, certain trainers may contend that the amendment will result in a violation on their part where a horse carries in its body or has administered to it on race day substances foreign to the natural horse which were previously considered by such horsemen to be acceptable.

Economic Impact

The proposed amendment prohibits a trainer from entering or starting a horse not in compliance with N.J.A.C. 13:70-14A.1. In addition to any liability which may be imposed upon the trainer or another person pursuant to N.J.A.C. 13:70-14A.1, the instant amendment would hold the trainer responsible for entering or starting a horse which is not in compliance therewith. The proposed amendment to N.J.A.C. 13:70-14A.1 published elsewhere in the issue of the New Jersey Register prohibits the horse from carrying in its body on the day of the race, or having administered to it on race day, substances foreign to the natural horse which may have been considered by some trainers to be acceptable under the regulation as it currently exists. N.J.A.C. 13:70-14A.1 further limits the manner in which non-prohibited items may be administered to the horse on race day. In the event a horse is entered to start in or starts in a race where the horse is not in compliance with N.J.A.C. 13:70-14A.1, actions consistent with the rules and regulations of the Commission, which could have a monetary impact, might result. Those horses determined not to be in compliance prior to the start of the race might not be allowed to compete and a monetary loss in the form of lost entry fees, fees otherwise associated with the entry, and loss of potential purse monies could result to the trainer, owner and other interested parties.

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Those same economic effects might result where the horse is determined to be out of compliance with N.J.A.C. 13:70-14A.1 following the race. Additionally, pursuant to the instant proposal, the trainer whose care the horse was under at the time would be subject to sanction in the form of a fine, suspension of license or such other penalty consistent with the rules and regulations of the Commission.

Regulatory Flexibility Analysis

The proposed amendment does not impose reporting or recordkeeping requirements. The compliance requirements of the proposed amendment implicate trainers, some of whom would be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although the number of small businesses to which the amendment would apply is not readily ascertainable, such entities would be required to comply with its requirements. As the amendment relates to the responsibility of trainers who elect to enter or start a horse under their care, it would not result in identifiable expenses to such entities. Any expense to those entities and affiliated persons would result from the situation where a horse is determined not to be in compliance with the rule, as described above. The Commission is of the view that the objectives of the amendment, to maximize the safe conduct and integrity of racing, require a consistent application of its terms to small businesses without regard to type or size.

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

13:70-20.11 Limitations on entering or starting

(a) A trainer shall not enter or start a horse that:

1. Is not in serviceable, sound racing condition;

2. Is on the stewards, starters or veterinarians list in any racing jurisdiction;

3. [Has been given in any manner whatsoever, internally or externally, any stimulant, depressant, local anesthetic, tranquilizer, anti-inflammatory or chemical of any kind or description, prior to the race] **Is not in compliance with N.J.A.C. 13:70-14A.1;**

[4. Has received medication excepting only external rubs and innocuous compounds, none of which shall contain any ingredient prohibited under (a)3 above on the day of the race; with the exception that the stewards may permit the administration of medication to control epistaxis to animals certified by licensed veterinarians practicing in New Jersey to be in need of such medication;]

[5.]**4.** Is blind, or has seriously impaired vision in both eyes;

[6.]**5.** Is a chronic known bleeder.

(b) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Medication

Proposed Amendment: N.J.A.C. 13:70-21.4

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.

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

Proposal Number: PRN 1993-351.

Submit written comments by August 18, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment creates consistency in the rules as a result of proposed simultaneous amendments to N.J.A.C. 13:70-14A.1 and 13:70-20.11 published elsewhere in this issue of the New Jersey Register.

N.J.A.C. 13:70-21.4 presently provides that an owner shall not knowingly enter, or cause to be entered, any horses having received medication for any reason on the day of the race, as specified in N.J.A.C. 13:70-20.11. The instant amendment to N.J.A.C. 13:70-21.4 would amend the rule to prohibit an owner from knowingly entering, or causing to be entered, any horses having received any substance foreign to the natural horse which results in the horse not being in compliance with N.J.A.C. 13:70-14A.1 and/or N.J.A.C. 13:70-20.11.

The proposed amendment to N.J.A.C. 13:70-21.4 incorporates N.J.A.C. 13:70-20.11 by reference and, as here pertinent, would result in a violation where an owner knowingly enters or causes to be entered in a race any horse having received any substance foreign to the natural horse in violation of N.J.A.C. 13:70-20.11. The simultaneous amendment to N.J.A.C. 13:70-20.11 would prohibit a trainer from entering or starting a horse that is not in compliance with N.J.A.C. 13:70-14A.1. The proposed amendment to N.J.A.C. 13:70-21.4 itself incorporates the latter by reference. Thus, as N.J.A.C. 13:70-21.4 incorporates by reference both N.J.A.C. 13:70-20.11 and 13:70-14A.1, a violation would result where an owner knowingly enters or causes to be entered in a race any horse having received any substance foreign to the natural horse in violation of N.J.A.C. 13:70-14A.1.

N.J.A.C. 13:70-14A.1 presently prohibits horses participating in a race from carrying in their bodies any drug and/or substance which is foreign to the natural horse except external rubs and innocuous compounds or as otherwise provided in the rules and regulations of the New Jersey Racing Commission ("Commission"), irrespective of when administered or injected.

The proposed amendment to N.J.A.C. 13:70-14A.1 provides that a drug and/or substance administered to a horse is foreign to the natural horse, and the horse is thus prohibited from carrying same in its body on race day irrespective of whether it is also naturally occurring to the horse. The proposed amendment to N.J.A.C. 13:70-14A.1 excludes innocuous compounds and external rubs, as well as items otherwise permissible under the rules and regulations of the Commission. The proposed amendment to N.J.A.C. 13:70-14A.1 sets forth examples of prohibited drugs and/or substances, and provides a definition of innocuous compounds and external rubs.

The proposed amendment to N.J.A.C. 13:70-14A.1 further prohibits the race horse from having administered to it on the day of the race any drug and/or substance foreign to the natural horse except innocuous compounds, external rubs, Lasix, Phenylbutazone and as otherwise provided by the rules and regulations of the Commission. The excepted items, on the day of the race may only be administered on the exterior of the horse (Lasix, however, may be administered intravenously; Phenylbutazone may be administered intravenously or orally) unless specifically provided otherwise by or pursuant to the rules and regulations of the Commission.

The proposed amendment to N.J.A.C. 13:70-14A.1 does not prohibit the horse from carrying in its body, on the day of the race, food products resulting from the normal and proper diet of a horse. On the day of the race, that proposed amendment provides that food constituting the normal and proper diet of a horse may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

Social Impact

This proposed amendment to N.J.A.C. 13:70-21.4 would be beneficial to the integrity of the racing industry since it will serve to insure that horses participating in races in this State do so without foreign substances in their bodies.

The proposed amendment creates consistency between it and the proposed amendments to N.J.A.C. 13:70-14A.1 and 13:70-20.11. In view of the latter two proposed regulatory provisions, and the instant proposed amendment's references thereto, some owners may oppose the instant amendment. Although anticipated that most horsemen will favor the amendment, certain owners may contend that the proposal will result in a violation on their part where they have knowledge that a horse carries in its body or has administered to it on race day substances foreign to the natural horse which were previously considered by such owners to be acceptable.

Economic Impact

In the event of non-compliance with the proposed amendment, actions consistent with the rules of the Commission which could have a monetary impact might result. Where an owner knowingly enters, or causes to be entered, any horses not in compliance with N.J.A.C. 13:70-14A.1 and/or N.J.A.C. 13:70-20.11, those horses might not be allowed to compete and a monetary loss in the form of lost entry fees, fees otherwise associated with the horses entry in the race and loss of potential purse monies could result. Those same economic effects might result where

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the horse is determined to be out of compliance following the race. Additionally, such owners would be subject to sanction in the form of a fine, suspension of license or such other penalty consistent with the rules and regulations of the Commission.

Regulatory Flexibility Analysis

The compliance requirements of the proposed amendment implicates owners, some of whom would be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although the number of small businesses to which the amendment would apply is not readily ascertained, such entity would be required to comply with its requirements. As the amendment relates to limitations on what a horse may carry in its body and have administered to it on the day of the race, it would not result in identifiable expenses to such entities. Any expense to those business entities would result from the situation where the owner or business entity knowingly enters, or causes to be entered, any horses having received a substance foreign to the natural horse resulting in non-compliance with N.J.A.C. 13:70-14A.1 and/or N.J.A.C. 13:70-20.11. The Commission is of the view that the objectives of the amendment, to maximize the safe conduct and integrity of racing, require a consistent application of its terms to small businesses without regard to type or size.

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

13:70-21.4 Medication

An owner shall not knowingly enter, or cause to be entered, any horses having received [medication for any reason on the day of the race, as specified in N.J.A.C. 13:70-20.11] **a substance foreign to the natural horse which results in the horse not being in compliance with N.J.A.C. 13:70-14A.1 and/or N.J.A.C. 13:70-20.11.**

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Trifecta

Proposed Amendment: N.J.A.C. 13:70-29.53

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1993-340.

Submit written comments by August 18, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The trifecta wager is a form of pari-mutuel wagering where each bettor selects, in order, the first, second and third placed horses in the designated trifecta race. The proposed amendment to the "Trifecta" rule would eliminate provisions that presently prohibit "coupled entries" or "field horses" from starting in races with trifecta wagering. The amendment would further allow trifecta wagers to be made in the minimum amount of $1.00, thus eliminating the present requirement that such wagers be $2.00 or more.

With the institution of common pool wagering, New Jersey race patrons have become familiar with trifecta races from other jurisdictions containing coupled entries and mutuel fields. "Field horses" are horses that are combined as one wagering interest when there are more than 12 horses starting in a race, which horses are collectively known as a mutuel field. "Coupled entries" are those horses that compete as a single wagering unit because of common ownership or trainer.

The winning trifecta combination, assuming adoption of the proposed amendment, would consist of the numbers of the first three horses as made official 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 such coupled entry or mutuel field would be considered for payoff purposes. The next best finishing horse or horses, not part of such coupled entry or mutuel field would, under the proposed amendment, be selected to determine the winning trifecta combination.

The proposed amendment would require that specific permission from the Commission be obtained before trifecta wagering can be conducted on any specific race containing a coupled entry or mutuel field.

In addition, as noted, the proposed amendment would eliminate the present requirement that trifecta wagers be no less than $2.00. The amendment would reduce the minimum allowable trifecta wager to $1.00.

Social Impact

The proposed amendment will have a positive social impact to the extent that patrons will not be prohibited from trifecta wagering on New Jersey races where there exists a coupled entry or mutuel field situation. Additionally, the reduction of the minimum trifecta wager from $2.00 to $1.00 will afford the public greater flexibility in terms of betting choices.

Economic Impact

The proposed amendment would have a positive economic impact on the State of New Jersey, track associations and horsemen's organizations by allowing racetracks to offer trifecta wagering in races containing a coupled entry or mutuel field. This will likely increase wagering by permitting racetracks to offer an additional wagering pool, thereby increasing revenue to the State, the track association and the horsemen. The reduction in the minimum allowable trifecta wager from $2.00 to $1.00 is not expected to have any appreciable effect on revenue, although it will certainly impact upon the betting strategy of individual players.

Regulatory Flexibility Statement

The proposed amendment, although posing no reporting, recordkeeping or other requirements on owners or trainers, some of which may be considered small businesses defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., would implicate such persons. The amendment would expand the opportunities available for the horses of owners and trainers to compete in trifecta races, with prior Commission approval, by allowing for "coupled entries" and "field horses" starting in races with trifecta wagering. Additionally, in order to effectuate the proposed amendment, the track associations' recordkeeping function would be implicated as a result of allowing for such trifecta wagering, and as a result of reducing the minimum trifecta wager from $2.00 to $1.00. However, those track associations, are not small businesses as each employ more than 100 people. Therefore, a regulatory flexibility analysis is not required as to those track associations.

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

13:70-29.53 Trifecta

(a) (No change.)

(b) Trifecta tickets shall be sold in not less than [$2.00] **$1.00** denominations and only from machines capable of issuing three numbers. [Nothing in this section shall preclude any permit-holders from the sale of combination trifecta tickets in the amount of $6.00].

(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.

[(i)]**(j)** (No change in text.)

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(a)

NEW JERSEY RACING COMMISSION

Harness Rules
Intent of Medication Rules
Proposed Amendment: N.J.A.C. 13:71-23.1

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1993-138.

Submit written comments by August 18, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment clarifies the intent of the existing rule and expands upon it by, among other things, listing several prohibited drugs and/or substances and incorporating New Jersey Racing Commission ("Commission") "Directive No. 3-1990—Tubing of Horses." Simultaneous with the proposed amendment to N.J.A.C. 13:71-23.1, a separate but related amendment is being proposed elsewhere in this issue of the New Jersey Register with regard to N.J.A.C. 13:71-23.8, Administering Medication to Respiratory Bleeders.

N.J.A.C. 13:71-23.1 presently prohibits horses participating in a race from carrying in their bodies any drug and/or substance which is foreign to the natural horse, irrespective of when administered or injected, excepting external rubs and innocuous compounds or as otherwise provided in the rules and regulations of the Commission.

The proposed amendment provides that a drug and/or substance administered to a horse is foreign to the natural horse, and the horse is thus prohibited from carrying same in its body on race day, irrespective of the time of administration and regardless of whether the drug or substance is also naturally occurring to the horse. The amendment excludes innocuous compounds (as determined by the Commission or its Executive Director through the issuance of a directive) and external rubs which do not contain prohibited drugs and/or substances, as well as items otherwise permissible under the rules of the Commission. The proposed amendment to N.J.A.C. 13:71-23.1 sets forth various of the prohibited drugs and/or substances. The amendment does not prohibit the horse from carrying in its body on the day of the race food products resulting from the normal and proper diet of a horse.

The proposed amendment further prohibits the race horse from having administered to it on the day of the race any drug and/or substance foreign to the natural horse except innocuous compounds (as determined by the Commission or its Executive Director through the issuance of a directive), external rubs, Lasix, Phenylbutazone and as otherwise provided in the rules of the Commission. In addition, except as may be otherwise specifically authorized, the amendment prohibits on the day of the race said excepted items from being administered to the horse (Lasix may be administered intravenously; Phenylbutazone may be administered intravenously or orally) except by application on the exterior of the horse. Food constituting the normal and proper diet of a horse may, however, on race day be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

Social Impact

This proposed amendment would be beneficial to the integrity of the racing industry since it will serve to insure that horses participating in races in this State do so without prohibited foreign substances in their bodies. The foreign substances may result in enhanced performance to the race horse, a decrease in race performance and/or, among other things, affect the health of the horse and consequently the safe conduct and integrity of the race. The amendment is more specific and definite than that which it is intended to replace and, by incorporating the 1990 directive prohibiting the tubing of horses, addresses a growing concern within the racing industry regarding the administration of foreign substances to horses by use of a tube apparatus. The amendment additionally enhances enforcement efforts by limiting the method of administration of external rubs and innocuous compounds on the day of the race only.

It is anticipated that, although the majority of the horsemen will likely see the amendment as beneficial, some will be opposed. Those opposed will likely contend that the amendment prohibits the horse from carrying in its body on the day of the race, or having administered to it on race day, substances foreign to the natural horse which were considered by some horsemen to be acceptable under the rule as it currently exists.

Economic Impact

The proposed amendment prohibits the horse from carrying in its body on the day of the race, or having administered to it on race day, substances foreign to the natural horse which may have been considered by some horsemen to be acceptable under the rule as it currently exists. The amendment further limits the manner in which non-prohibited items may be administered to the horse on race day. In the event of non-compliance with the amended rule, actions consistent with the rules and regulations of the Commission which could have a monetary impact, might result. Those horses determined not to be in compliance prior to the start of the race might not be allowed to compete and a monetary loss in the form of lost entry fees, fees otherwise associated with the horses' entry in the race and loss of potential purse monies could result. Those same economic effects might result where the horse is determined to be out of compliance with the rule following the race. Additionally, the person or persons responsible for the violation would be subject to sanction in the form of a fine, suspension of license or such other penalty consistent with the rules and regulations of the Commission.

Regulatory Flexibility Analysis

The compliance requirements of the proposed amendment implicate owners, trainers, veterinarians and others affiliated with conditioning a horse for participation in a race, some of whom would be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although the number of small businesses to which the rule would apply is not readily ascertainable, such entities would be required to comply with its requirements. As the amendment concerns limitations on what a horse may carry in its body and have administered to it on the day of the race, it would not result in identifiable expenses to such entities. Any expense to those entities and affiliated persons would result from the situation where a horse is determined not to be in compliance with the rule, as described above. The Commission is of the view that the objectives of the amendment, to maximize the safe conduct and integrity of racing, require a consistent application of its terms to small businesses without regard to type or size.

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

13:71-23.1 Intent of medication rules; **general provisions**

(a) It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and racing participants through the prohibition and/or control of all drugs and/or substances foreign to the natural horse. [No horse participating in a race shall carry in its body any drug and/or substance which is foreign to the natural horse, excepting external rubs and innocuous compounds as herein defined and as otherwise provided for in these rules and regulations irrespective of when administered or injected.] **For the purpose of these rules, a drug and/or substance administered to a horse is foreign to the natural horse irrespective of whether the said drug and/or substance is also naturally occurring to the horse.**

(b) On the day of the race, irrespective of the date, time and method of administration, no horse entered to start in or participating in any race shall carry in its body any drug and/or substance foreign to the natural horse, excepting external rubs and innocuous compounds as defined in this section and as otherwise provided for in these rules. Examples of drugs and/or substances foreign to the natural horse, and thus prohibited pursuant to this section and these rules are as follows:

1. Articles meeting the definition of drug as set forth in N.J.A.C. 13:71-4.1;
2. Chemical substances;
3. Stimulants;
4. Depressants;
5. Anesthetics;
6. Tranquilizers;
7. Anti-inflammatories;

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8. Erythropietin (epogen, EPO);
9. Pain killers;
10. Sodium bicarbonate (baking soda);
11. Confectionery sugar;
12. Stamina builders; and
13. Mixtures, compounds or solutions commonly referred to as "milkshakes" which contain any prohibited drug and/or substance.

(c) Nothing contained in this section, however, shall be construed to prohibit the horse from carrying in its body on the day of the race food products resulting from the normal and proper diet of a horse.

(d) On the day of the race, except as otherwise provided for in these rules, no horse entered to start in or participating in any race shall have administered to it any such drug and/or substance foreign to the natural horse, including as a result of administration of an external rub or what would otherwise constitute an innocuous compound. In no event, except for the intravenous administration of furosemide (Lasix) pursuant to N.J.A.C. 13:71-23.8, the intravenous or oral administration of phenylbutazone pursuant to N.J.A.C. 13:71-23.8, or as may otherwise specifically be authorized by or pursuant to these rules, shall the administration of said excepted items be accomplished intravenously, by injection, by jugging or drenching, or through the use of a syringe or sharp, dose syringe, or tube apparatus. A non-prohibited external rub or innocuous compound shall on the day of the race be administered only by application on the exterior of the horse, except that food constituting the normal and proper diet of a horse may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

(e) An external rub or innocuous compound is a single substance, mixture of substances or compound which does not contain any of the 13 examples of prohibited items as set forth in (b) above, or additionally, any other substance foreign to the natural horse which alters its normal physiological state.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Administering Medication to Respiratory Bleeders

Proposed Amendment: N.J.A.C. 13:71-23.8

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1993-352.

Submit written comments by August 18, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment concerns standards to be implemented for Phenylbutazone post-race testing. The amendment incorporates New Jersey Racing Commission ("Commission") "Directive No. 2—May 22, 1991," with modifications as discussed below.

"Directive No. 2—May 22, 1991" sets forth standards to be implemented for Phenylbutazone post-race horse testing. The directive authorizes the following actions dependent on the quantities of Phenylbutazone found as a result of post-race testing and the prior history of the offending trainer. For a post-race finding 0 to 2.5 micrograms per milliliter of Phenylbutazone, no action. For a finding of 2.6 to 3.0 micrograms per milliliter, the following action: first offense—$250.00 fine; second offense—$500.00 fine and seven days suspension; third offense—$500.000 fine, 15 days suspension and loss of purse. For a finding in excess of 3.0 micrograms per milliliter of Phenylbutazone, the following action: first offense—$500.00 fine and loss of purse; second offense—$500.00 fine, 15 days suspension and loss of purse; third offense—$500.00 fine, 30 days suspension and loss of purse. For a fourth or subsequent violation of either of these standards, the directive calls for the trainer to be subject to such fines and/or suspensions as the Racing Commission deems appropriate. The directive further provides that a suspension against a trainer shall be on his record for a two-year period of time and, two years from the date of the violation, the record of suspension is to be eliminated therefrom.

The proposed amendment is intended to codify the existing directive, and accomplish limited substantive changes. The proposed amendment, intended as an exception to N.J.A.C. 13:71-23.1, authorizes the imposition of penalties upon the responsible persons as well as the trainer for violating its standards regarding the administration of Phenylbutazone. It further authorizes the administration of Phenylbutazone either orally or intravenously.

The proposed amendment sets forth action levels in excess of 2.5 to 3.0 micrograms per milliliter, and in excess of 3.0 micrograms per milliliter. A subsequent violation of either action level results in an increase of the potential penalties which may be imposed. However, where a violation of one action level occurs, followed by a violation within the parameters of the other action level, the offender will not be treated as a repeat offender. A violation will only subject the offending party to an enhanced potential penalty where the second or subsequent violation occurs within the same action level.

The proposed amendment sets forth the same penalties as the directive with two exceptions. For a third violation where the horse is determined to carry in its body above 2.5 micrograms per milliliter (up to 3.0 micrograms per milliliter) of Phenylbutazone, the comparable provision of the directive (2.6 to 3.0 micrograms per milliliter) allowed for penalties of a $500.00 fine, 15 days suspension and loss of purse. For a third violation where the horse is determined to carry in its body in excess of 3.0 micrograms per milliliter of Phenylbutazone, the directive allowed for a $500.00 fine, 30 days suspension and loss of purse. The proposed amendment would modify these penalties by authorizing the racing official to exercise discretion as to the length of suspension.

Additionally, the proposed amendment does not allow for the elimination of a record of offense after two years from that date of the violation.

Although the title of N.J.A.C. 13:71-23.8 will be changed as a result of the instant proposal, the current substantive provisions of N.J.A.C. 13:71-23.8 shall remain as they presently exist.

Social Impact

This proposed amendment to N.J.A.C. 13:71-23.8 codifies, by regulation, the existing state of affairs with the exceptions noted in the Summary above. Although it is anticipated that most horsemen will favor the amendment, certain horsemen may disfavor the extension of possible liability to responsible persons other than the trainer, the noted modifications to the penalty provisions of the directive, and the failure of the proposed rule to provide for the elimination of violations from an offending party's violation record. The Commission is, however, of the view that the proposed amendment will have a positive effect in that it will promote the integrity of racing as well as the safe conduct of the sport and race participants.

Economic Impact

The proposed amendment sets forth a limited exception to N.J.A.C. 13:71-23.1, by setting forth conditions under which a horse on the day of the race may carry in its body and have administered to it phenylbutazone. In the event of non-compliance with the amended rule, actions consistent with the amendment could have a monetary impact on the responsible trainer, owner, veterinarian or such other person. These potential penalties include fines, license suspensions and, as to the owner and trainer, possible loss of purse.

Regulatory Flexibility Analysis

The compliance requirements of the proposed amendment implicate owners, trainers, veterinarians and others affiliated with the conditioning of a horse for participation in a race, some of whom would be considered small busineses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although the number of small businesses affected by the amendment is not readily ascertainable, such entities would be required to comply with its requirements. As the amendment concerns limitations concerning phenylbutazone administration to race horses, it would not result in identifiable expenses to such entities. Any expense to those entities and responsible persons would result from the situation where a horse is determined not to be in compliance with the rule, as described above. The Commission is of the view that the objectives of the amendment require a consistent application of its terms to small businesses without regard to type or size.

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

13:71-23.8 Administering medication to respiratory bleeders; **standards for the administration of phenylbutazone**

(a)-(e) (No change.)

(f) Notwithstanding anything to the contrary in this section or in N.J.A.C. 13:71-23.1, on the day of the race a horse may carry in its body and have administered to it, intravenously or orally, phenylbutazone in a quantity of 2.5 micrograms per milliliter or less as determined by post-race testing.

(g) Should the judges or stewards, as appropriate, determine that any trainer or persons have violated (f) above, they shall punish the offending party as follows:

1. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity above 2.5 micrograms per milliliter up to and including 3.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

i. First violation of N.J.A.C. 13:71-23.8(g)1—$250.00 fine;

ii. Second violation of N.J.A.C. 13:71-23.8(g)1—$500.00 fine and seven-days suspension;

iii. Third violation of N.J.A.C. 13:71-23.8(g)1—$500.00 fine, loss of any purse and suspension; and

iv. Fourth or subsequent violation of N.J.A.C. 13:71-23.8(g)1—such fines, suspensions and/or other penalties allowed by this chapter.

2. In the event post-race testing determines that any horse carried in its body on the day of the race phenylbutazone in a quantity exceeding 3.0 micrograms per milliliter, the trainer and any other responsible party shall be subject to the following penalties regardless of whether or not the same horse is involved:

i. First violation of N.J.A.C. 13:71-23.8(g)2—$500.00 fine and loss of any purse;

ii. Second violation of N.J.A.C. 13:71-23.8(g)2—$500.00 fine, loss of any purse and 15-days suspension;

iii. Third violation of N.J.A.C. 13:71-23.8(g)2—$500.00 fine, loss of any purse and suspension; and

iv. Fourth or subsequent violation of N.J.A.C. 13:71-23.8(g)2—such fines, suspensions and/or other penalties allowed by this chapter.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Trifecta

Proposed Amendment: N.J.A.C. 13:71-27.50

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.

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

Proposal Number: PRN 1993-367.

Submit written comments by August 18, 1993 to:
Michael Vukcevich, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The trifecta wager is a form of pari-mutuel wagering where each bettor selects, in order, the first, second and third placed horses in the designated trifecta race. The proposed amendment to the "Trifecta" rule would eliminate provisions that presently prohibit "coupled entries" or "field horses" from starting in races with trifecta wagering. The amendment would further allow trifecta wagers to be made in the minimum amount of $1.00, thus eliminating the present requirement that such wagers be $2.00 or more.

With the institution of common pool wagering, New Jersey race patrons have become familiar with trifecta races from other jurisdictions containing coupled entries and mutuel fields. "Field horses" are horses that are combined as one wagering interest when there are more than 12 horses starting in a race, which horses are collectively known as a "mutuel field". "Coupled entries" are those horses that compete as a single wagering unit because of common ownership or trainer.

The winning trifecta combination, assuming adoption of the proposed amendment, would consist of the numbers of the first three horses as made official 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 such coupled entry or mutuel field would be considered for payoff purposes. The next best finishing horse or horses, not part of such coupled entry or mutuel field, would under the proposed amendment be selected to determine the winning trifecta combination.

The proposed amendment would require that specific permission from the Commission be obtained before trifecta wagering can be conducted on any specific race containing a coupled entry or mutuel field.

In addition, as noted, the proposed amendment would eliminate the present requirement that trifecta wagers be no less than $2.00. The amendment would reduce the minimum allowable trifecta wager to $1.00.

Social Impact

The proposed amendment will have a positive social impact to the extent that patrons will not be prohibited from trifecta wagering on New Jersey races where there exists a coupled entry or mutuel field situation. Additionally, the reduction of the minimum trifecta wager from $2.00 to $1.00 will afford the public greater flexibility in terms of betting choices.

Economic Impact

The proposed amendment would have a positive economic impact on the State of New Jersey, track associations and horsemen's organizations by allowing racetracks to offer trifecta wagering in races containing a coupled entry or mutuel field. This will likely increase wagering by permitting racetracks to offer an additional wagering pool, thereby increasing revenue to the State, the track association and the horsemen. The reduction in the minimum allowable trifecta wager from $2.00 to $1.00 is not expected to have any appreciable effect on revenue, although it will certainly impact upon the betting strategy of individual players.

Regulatory Flexibility Statement

The proposed amendment, although posing no reporting, recordkeeping or other requirement on owners or trainers, some of which may be considered small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., would implicate such persons. The amendment would expand the opportunities available for the horses of owners and trainers to compete in trifecta races, with prior Commission approval, by allowing for "coupled entries" and "field horses" starting in races with trifecta wagering. Additionally, in order to effectuate the proposed amendment, the track associations' recordkeeping function would be implicated as a result of allowing for such trifecta wagering, and as a result of reducing the minimum trifecta wager from $2.00 to $1.00. However, those track associations are not small businesses as each employ more than 100 people. Therefore, a regulatory flexibility analysis is not required as to those track associations.

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

13:71-27.50 Trifecta

(a) (No change.)

(b) Trifecta tickets shall be sold in not less than [$2.00] **$1.00** denominations and only from machines capable of issuing three numbers. [Nothing in this section shall preclude any permit-holders from the sale of combination trifecta tickets in the amount of $6.00.]

(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

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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.

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

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

General Policies and Procedures

Proposed Readoption: N.J.A.C. 18:2

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

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1993-338.

Submit comments by August 18, 1993 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:2, General Policies and Procedures, will expire September 6, 1993. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules without change at this time. However, the Division intends to shortly propose amendments pursuant to the Taxpayer Bill of Rights as described below.

In 1936, the State Tax Uniform Procedure Law (P.L.1936, c.101) (N.J.S.A. 54:48-1 et seq.) was enacted to provide as far as feasible a uniform procedure to be followed by taxpayers in relation to any state taxes and to afford uniform remedies and procedures which may be resorted to by the State in the collection of taxes.

On July 28, 1988 post amnesty rules were adopted as required as a result of P.L.1987, c.76, which authorized "tax amnesty." The new rules adopted included N.J.A.C. 18:2-2.10, 2.11; 18:35-1.19, and 1.20. Certain rules were repealed and replaced by new rules. These included N.J.A.C. 18:2-2.2, 2.5, 2.8; and 18:7-14.1. Certain amendments to the State Tax Uniform Procedure Law were also adopted pursuant to the post tax amnesty law. These amendments included N.J.A.C. 18:2-2; 18:5-12.2; 18:7-3.15, 11.12, 13.7, 13.10, 13.12, 13.13, 14.3, 14.7, 14.17, 14.20; 18:8-4.5, 8.1, 8.2, 8.3, 8.4; 18:22-2.4, 8.4; 18:26-8.4; 18:35-1.9, 1.18; and 18:37-2. Certain rules were also repealed. These included N.J.A.C. 18:2-2.9; 18:7-14.13, 14.14, 14.15 and 14.16; 18:8-8; 18:9-8.5, 8.6 and 8.7; 18:18-8.11, 12.5 and 12.7; 18:26-9.8; 18:37-3 and 4. The "post-amnesty" changes reflected the State's interest in increased enforcement of the tax laws, both by civil action and criminal action.

The rules in Chapter 2 have remained effective since the 1988 amendments with the only other amendments taking place in 1991 concerning abatement of penalties and interest at N.J.A.C. 18:2-2.7.

Currently, Subchapter 1, Forms, sets out the requirement of the use of forms for filing of either those furnished by the Director or if other forms are used the conditions that must be met in the reproduction of such forms.

Subchapter 2, Penalties and Interest, sets out the penalties and interest to be assessed on taxpayers failing to file a return on time. The provisions include extensions, definition of cost of collection, additional assessments, abatement of penalty and interest, criminal penalties and credit for erroneous payments and collections.

The Division determined that the current rules should be readopted without change at this time in order that they remain in effect and so that no gap in the effectiveness of the rules would exist. Although no amendments are being proposed as part of this rulemaking, the Division is currently in the process of reviewing and determining the need to amend these rules in light of the fact that on December 10, 1992, P.L.1992, c.175, the Taxpayer Bill of Rights, was adopted revising various tax provisions of the State Tax Uniform Procedure Law concerning payments, penalties, appeals and administration of certain State tax liabilities. The intent of this legislation is to ensure that all taxpayers receive fair and equal treatment in their dealings with the New Jersey Division of Taxation. Five provisions of the Bill of Rights took effect on January 1, 1993. The balance of the provisions take effect July 1, 1993.

Social Impact

The State Tax Uniform Procedure Law rules apply to any tax payable to or collectible by the Division of Taxation unless otherwise provided in the law specifically imposing such tax.

The post-amnesty rules reflect the State's commitment to the imposition of tougher civil and criminal penalties in the case of any taxpayer who fails or refuses to comply with any state tax law. They will continue to help increase the compliance level of all New Jersey taxpayers who have failed to meet their obligations.

Economic Impact

The adoption of the post-amnesty rules in 1988 caused an increase in tax awareness and tax compliance which resulted in an increase in State tax revenues. Continuation of these rules is expected to have a positive effect on such revenues.

Regulatory Flexibility Analysis

The rules in N.J.A.C. 18:2 impact upon the individual taxpayer as well as businesses both large and small as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the provisions of the rules regarding reporting and recordkeeping, as well as compliance, requirements must be uniformly imposed without regard to business size as to do otherwise would be in noncompliance with the applicable statutes. It should be noted that in so far as the penalties and interest which accrues are related to the amounts being delinquent, the amounts may or may not be related to business size.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:2.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Definitions

Changepersons Exchanging Currency and Gaming Chips

Proposed Amendments: N.J.A.C. 19:45-1.1, 1.34, 1.35, and 1.46, and 19:46-1.5

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)3.

Proposal Number: PRN 1993-385.

Submit written comments by August 18, 1993 to:
Seth H. Briliant, Assistant Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The changemaking function in a casino is presently handled by slot cashiers in slot booths, freestanding change machines, mechanical bill changers connected to slot machines, and roving changepersons on the casino floor. These changepersons now exchange only coin and slot tokens for currency.

In connection with a recent proposal which would permit slot attendants to exchange currency for currency, see 25 N.J.R. 1673(a), and the

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notice of adoption in the July 6, 1993 New Jersey Register, TropWorld Casino and Entertainment Resort suggested that the Commission's regulations be amended to permit changepersons to exchange currency for currency as well. Although the suggestion was rejected as being beyond the scope of the proposal, it was noted that the idea had merit and would be proposed in the near future. Trump's Castle Casino Resort also informally suggested that changepersons should be permitted to accept (but not sell) gaming chips in exchange for coin, slot tokens or currency.

These proposed amendments would permit changepersons to carry an imprest inventory of coin, slot tokens, and currency, which could be exchanged for coupons, coin, gaming chips, slot tokens and currency, thus providing additional ways for slot patrons to obtain different types of change on the casino floor. The proposal would also clarify the procedures for issuing, maintaining and exchanging a changeperson's imprest inventory.

Social Impact

It is anticipated that these amendments will result in more convenience for casino patrons, because it will provide another way for them to exchange currency and gaming chips.

Economic Impact

It is hoped that these amendments will further streamline and expedite the changemaking process, thus providing a favorable economic benefit to casino licensees.

Regulatory Flexibility Statement

The proposed amendments would affect only casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. 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.

. . .

"Changeperson" means a person employed in the operation of a casino to possess an imprest inventory of coin**, currency and slot tokens** created from slot booth funds and used for the even exchange with slot machine patrons of coupons, coin, currency**, gaming chips** and slot tokens.

. . .

19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1.-11. (No change.)

12. The exchange with the cashiers' cage or master coin bank of any coin, currency, slot tokens, chips, plaques, issuance copies of Slot Counter Checks and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier or master coin bank cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of [change] **coin, currency and slot tokens** with changepersons, the slot booth shall not be allowed to obtain coin**, currency** or slot tokens, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage, the master coin bank, or a coin vault approved pursuant to N.J.A.C. 19:45-1.14(e). [Such exchanges] **An exchange with the cashiers' cage, main coin bank or coin vault** must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booth[s]. **An exchange with a changeperson must be documented in accordance with procedures approved by the Commission.**

(b) (No change.)

19:45-1.35 Accounting controls for slot booths and change machines

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

(d) The slot booth inventory may be used to supply changepersons with an imprest inventory of coin**, currency and slot tokens,** provided that such inventory shall only be used to [exchange] **accept** currency, coin, **gaming chips, slot tokens** and coupons presented by a patron **in exchange** for an equivalent amount of currency [and]**,** coin**, and slot tokens**. The exchange of coupons shall be in accordance with N.J.A.C. 19:45-1.46(i). **If a changeperson's inventory is obtained from a location other than a slot booth, the location and the procedures for the issuance and maintenance of the inventory shall be approved by the Commission.**

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

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a)-(i) (No change.)

(j) Coupons shall be redeemed in the following manner:

1. Coupons redeemable for [cash] **coin, currency** or slot tokens shall only be redeemed by changepersons or at the slot change booths or the cashiers' cage located on the casino floor. A changeperson, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens and shall cancel the coupons upon acceptance. [Coupons] **A coupon** redeemable for [cash] **currency** may also be redeemed by slot attendants, who shall accept the coupon[s] in exchange for the stated amount of currency and shall cancel the coupon upon acceptance. Cancellation of coupons by changepersons and slot attendants shall be in a manner that will permit subsequent identification of the individual who accepted and canceled the coupon.

2.-4. (No change.)

(k)-(o) (No change.)

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques

(a) (No change.)

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths **or with changepersons** for **currency,** coin or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 to play the slot machines and may be used for simulcast wagering.

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

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Complimentary Services or Items; Procedures for Complimentary Cash and Noncash Gifts
Proposed Amendments: N.J.A.C. 19:45-1.9 and 1.9B

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

Authority: N.J.S.A. 5:12-63c, 69a, 70j, 70l, 99 and 102.

Proposal Number: PRN 1993-387.

Submit written comments by August 18, 1993 to:
David C. Missimer
Assistant General Counsel
Casino Control Commission
Tennessee Avenue at the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Commission recently adopted a series of amendments to N.J.A.C. 19:45-1.9 and 1.9B concerning the manner in which casino licensees are required to control and report the issuance of complimentary services and items (see 24 N.J.R. 4570 and 25 N.J.R. 1520(a) and 1521(a)). As casino licensees began to develop the internal

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control submissions necessary to implement these amendments, it became apparent to casino licensees and the regulatory agencies that these amendments had created certain practical problems which made it difficult to conform the new regulatory requirements with previously approved complimentary programs already in operation. The principal problem raised by casino licensees was the difficulty of tracking, in a single system, the cash complimentaries issued pursuant to the various types of complimentary programs in operation and assuring that such cash complimentaries did not exceed the annual limitations imposed by N.J.A.C. 19:45-1.9B(g). The industry also noted that the adopted amendments made it very difficult to continue to offer special promotional events, such as contests, to preferred customers because the amendments required any potential winner of a contest involving cash prizes to meet the annual limitations on cash complimentaries contained in N.J.A.C. 19:45-1.9B(g).

The proposed amendments are intended to resolve these problems in a manner which permits casino licensees to continue previously approved complimentary programs without diminishing the accuracy or usefulness of the information concerning the issuance of complimentaries which is reported to the regulatory agencies by casino licensees. Specifically, the issues noted above are addressed by amending N.J.A.C. 19:45-1.9(f) and proposing a new type of complimentary program in N.J.A.C. 19:45-1.9(g). The amendments to N.J.A.C. 19:45-1.9(f) clarify that any complimentary issued pursuant to a table game or slot machine complimentary incentive program shall be regulated pursuant to the requirements of N.J.A.C. 19:45-1.46 and shall not be subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if the complimentary and the program comply with the requirements of paragraphs 1 through 4 of N.J.A.C. 19:45-1.9(f). Any complimentary which does not meet these requirements, even if issued in conjunction with the operation of a complimentary incentive program, shall be required to comply with the general requirements governing complimentaries which are set forth in N.J.A.C. 19:45-1.9 and 1.9B, including the annual limitation on cash complimentaries.

The proposed amendment to N.J.A.C. 19:45-1.9(f)3 establishes the requirement, consistent with the theory by which complimentary incentive programs are treated as a separate class, that any schedule of authorized complimentaries utilized by a casino licensee as part of the program must be based on and shall not exceed the theoretical win of the casino licensee from each patron based on actual play. This provision substitutes for the annual limitation on cash complimentaries which would otherwise be imposed by N.J.A.C. 19:45-1.9B(g).

The proposed amendment to N.J.A.C. 19:45-1.9(f)4 further segregates complimentary incentive programs from the requirements applicable to complimentaries in general by providing that no complimentaries issued in accordance with such programs, even those over $500.00 in value, have to be included on the daily complimentary report required by N.J.A.C. 19:45-1.9(e). The amendments to N.J.A.C. 19:45-1.9(f)4 also require, however, that each complimentary incentive program include a reporting system which records the information specified therein and that such information be made available to the Division upon request.

The issue of contests for preferred patrons is addressed by the proposed amendment to N.J.A.C. 19:45-1.9(g). This subsection creates a new class of complimentary program called programs for invited guests. Proposed new subsection (g) is similar in structure to N.J.A.C. 19:45-1.9(f). Again, complimentaries which are issued in accordance with the requirements of the program are regulated by the terms of N.J.A.C. 19:45-1.46 and are not subject to inclusion on the daily complimentary report or the annual cash complimentary limits established by N.J.A.C. 19:45-1.9B(g). In order to qualify as a complimentary program for invited guests, the program shall: be submitted for review pursuant to N.J.A.C. 19:45-1.46; be limited to invited guests only and must include at least 25 participants; involve a contest of skill or chance which is used to determine the distribution of the complimentaries; and require the preparation of a report, available to the Division upon request, which identifies the participants in the program and any complimentaries received pursuant to their participation. In addition, N.J.A.C. 19:45-1.9(g)4 establishes an annual limit of $100,000 on the amount of cash complimentaries which can be awarded to any one person as a result of their participation in complimentary programs for invited guests. This annual limitation is determined separately from the annual limitation which is otherwise imposed by N.J.A.C. 19:45-1.9B(g).

The proposed amendments also make various amendments to N.J.A.C. 19:45-1.9 and 1.9B which are intended to clarify the application of these sections. For example, N.J.A.C. 19:45-1.9(e) is amended to clarify the types of complimentaries which have to be reported on the daily complimentary report. In particular, the rule is amended to clarify that the $100.00 threshold for reporting individual complimentaries only applies to noncash complimentaries (N.J.A.C. 19:45-1.9(e)1); in other words, all cash complimentaries, regardless of amount, must be included on the daily complimentary report unless they are otherwise exempted because they are issued pursuant to one of the three specified classes of exempt complimentary programs (N.J.A.C. 19:45-1.9(e)2).

The scope of N.J.A.C. 19:45-1.9B is clarified through an amendment to subsection (a) which provides that a "complimentary cash or noncash gift," for purposes of that section, does not include any complimentary which is issued pursuant to a complimentary incentive program or a complimentary distribution program. The amendments also establish, through omission from the list of exemptions noted above and through a specific reference in N.J.A.C. 19:45-1.9B(a)5, that cash and noncash complimentaries issued pursuant to complimentary programs for invited guests are, except as otherwise provided in N.J.A.C. 19:45-1.9B, subject to the requirements of that section.

The proposed amendment to N.J.A.C. 19:45-1.9B(b) corrects the cross reference contained in that subsection since the complimentary programs exempted from the daily reporting requirements of N.J.A.C. 19:45-1.9(e) are now contained within subsection (e) itself. In addition, the language of N.J.A.C. 19:45-1.9B(c) is amended in an attempt to eliminate any confusion which may remain as to whether alternative methods of issuing cash complimentaries are authorized. This amendment does not change the substance of the existing rule but merely iterates the position taken by the Commission when it was originally adopted (see 24 N.J.R. 4572).

Finally, a new subsection (h) is added to N.J.A.C. 19:45-1.9B to reinforce that complimentary cash gifts issued pursuant to complimentary incentive programs, complimentary programs for invited guests and complimentary distribution programs are not subject to the annual limitations on cash complimentaries otherwise established by N.J.A.C. 19:45-1.9B(g).

Social Impact

The proposed amendments are anticipated to have little social impact. These rules govern the manner in which casino licensees are required to record and report the issuance of complimentary services or items. Any social values reflected in the determination to allow casino licensees to engage in such activities are reflective of the legislative judgment to authorize such activities as opposed to the rules themselves. The Commission believes the proposal will allow it to effectively exercise its responsibility to regulate the conduct of casino licensees in such a manner so as to instill and maintain public confidence in the regulation of casino gaming in this State while being appropriately responsive to the concerns raised by licensees.

Economic Impact

Although casino licensees may incur some initial costs in establishing and implementing the procedures necessary to comply with the proposed amendments, it is anticipated that these costs will be more than offset by the ability of casino licensees to continue to make use of complimentary programs which have been properly authorized.

It is not anticipated that the proposed amendments will have any significant economic impact on the Commission or the Division of Gaming Enforcement.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed amendments will only affect the operation of New Jersey casino licensees, none of which qualifies as a small business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.9 Complimentary services or items

(a) (No change.)

(b) No casino licensee may offer or provide any complimentary services, gifts, cash or other items of value to any person except as authorized by N.J.S.A. 5:12-102(m). Each casino licensee shall, pursuant to the provisions of N.J.S.A. 5:12-99a(2) and N.J.A.C. 19:45-1.3, prepare and maintain internal controls for the authorization and issuance of complimentary services and items, including cash and noncash gifts issued pursuant to N.J.S.A. 5:12-102(m) and N.J.A.C. 19:45-1.9B. Such internal controls shall include, without limitation, the procedures by which the casino

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licensee delegates to its employees the authority to approve the issuance of complimentary services and items and the procedures by which conditions or limits, if any, which may apply to such authority are established and modified, including limits based on relationships between the authorizer and recipient, and shall further include effective provisions for audit purposes. Notwithstanding the provisions of N.J.A.C. 19:45-1.3, a casino licensee shall submit the internal controls, or any changes thereto, required by this section to the Commission and Division at least 15 days prior to their implementation. Such internal controls shall be deemed approved by the Commission 15 days after submission unless the casino licensee is notified in writing to the contrary. Notwithstanding the foregoing:

1.-2. (No change.)

3. Nothing herein shall be deemed to require a casino licensee to identify in its submission the terms or conditions pursuant to which a complimentary service or item may be granted**, except as otherwise provided in (f)3 below,** or [, except as otherwise provided in N.J.A.C. 19:45-1.9B,] to obtain Commission approval of any limits or conditions which may be placed on the authority of its employees to approve or issue complimentary services or items**, except as otherwise provided in N.J.A.C. 19:45-1.9B**; provided, however, that each casino licensee shall be required to maintain a written record of all such terms, limits or conditions and the specific employees to whom they apply.

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

(e) Each casino licensee shall record, on a daily basis, the name of each person provided with complimentary services or items, the category of service or item provided, the value (as calculated in accordance with (c) above) of the services or items provided to such person, and the person authorizing the issuance of such services or items. A copy of this record shall be submitted to the Division's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving:

1. Each noncash complimentary service[s] or [other] item[s] which [: 1. Have] **has** a value (as calculated in accordance with (c) above) of $100.00 or less; [or] **and**

2. [Are] **Any complimentary service or item, including a cash or noncash gift, which is** issued pursuant to:

i. A table game or slot machine complimentary incentive program regulated by (f) below;

ii. A complimentary program for invited guests regulated by (g) below; or

iii. A [a] complimentary distribution program regulated by N.J.A.C. 19:45-1.46.

(f) [Notwithstanding any other provision of this section or N.J.A.C. 19:45-1.9B to the contrary, any] **Any** complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a table game or slot machine complimentary incentive program shall be [recorded in accordance with] **subject to** the requirements of N.J.A.C. 19:45-1.46 **and this subsection** and shall not be included on the daily complimentary report required by (e) above **or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g)** if:

1.-2. (No change.)

3. Each participant in the program is issued complimentaries in accordance with a predetermined schedule as a result of his or her table game or slot play**, which schedule shall, with regard to cash complimentaries, be based on and shall not exceed the theoretical win of the casino licensee from each participant as reasonably determined from data maintained pursuant to the approved internal controls for the complimentary incentive program**; and

4. [The complimentary service or item has a value (as calculated in accordance with (c) above) of $500.00 or less] **A record is maintained of the name of each participant who receives a complimentary service or item as a result of his or her participation in the program, the amount of each complimentary and the type of complimentary, which record shall be made available to the Division upon request in the report format used by the casino licensee.**

(g) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a complimentary program for invited guests shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if:

1. The program is submitted to and approved by the Commission in accordance with the requirements of N.J.A.C. 19:45-1.46 as if the program were a complimentary distribution program;

2. The program is open to participation by invited guests only and there are at least 25 participants;

3. The program involves a contest of chance or skill which is used to determine the distribution of the complimentaries to the participants;

4. The recipient of any cash complimentary issued as part of the program has not received more than $100,000 in cash complimentaries from complimentary programs for invited guests conducted by the casino licensee during the previous 12 month period; and

5. A record is maintained of the name of each person invited to participate in the program, the name of each participant who receives a complimentary service or item as a result of his or her participation in the program, the amount of each complimentary and the type of complimentary, which record shall be made available to the Division upon request.

19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) No casino licensee shall offer or provide, either directly or indirectly, any complimentary cash or noncash gift to any person or his or her guests except in accordance with the provisions of N.J.S.A. 5:12-102m and this section. For the purposes of this section, "complimentary cash or noncash gift" does not refer to any complimentary service or item which is provided pursuant to N.J.S.A. 5:12-102m(1) through (3), **N.J.A.C. 19:45-1.9(f) or N.J.A.C. 19:45-1.46**. Complimentary cash gifts shall include, without limitation:

1. (No change.)

2. Travel or walk money payments made for the purpose of enabling a patron to return home; [and]

3. Slot tokens issued to any person [except those provided pursuant to a complimentary distribution program regulated by N.J.A.C. 19:45-1.46.]**;**

4. Cash complimentaries issued to patrons as a result of actual gaming activity; and

5. Cash complimentaries issued to participants in complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g), except as otherwise provided in this section.

(b) Except as otherwise provided in N.J.A.C. 19:45-1.9[(f)]**(e)**, all complimentary cash and noncash gifts provided by a casino licensee shall be recorded in accordance with the provisions of N.J.A.C. 19:45-1.9(e). If a complimentary cash or noncash gift has a value of $500.00 or more, the casino licensee shall also:

1.-3. (No change.)

(c) All complimentary cash gifts shall be disbursed directly to the patron by a general cashier at the cashiers' cage after receipt of appropriate documentation[,] or [as otherwise specified] **in any other manner approved by the Commission** in a casino licensee's [approved] internal control[s] **submission**.

(d) (No change.)

(e) If a casino licensee provides complimentary cash and noncash gifts worth $2,000 or more to a person or his or her guests within any five day period, the casino licensee shall record the reason why such gifts were provided and maintain such records available for inspection by the Commission or Division upon request. Such reasons may include, without limitation, **the participation of the person in a complimentary program for invited guests conducted pursuant to N.J.A.C. 19:45-1.9(g) or** information concerning the person's player rating, which rating shall be based upon the actual amount and frequency of play by the person as recorded in the casino licensee's player rating system.

(f) (No change.)

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(g) [Notwithstanding any other provision of this section, no] **No** casino licensee shall provide to any patron, during any 12-month period, complimentary cash gifts which exceed the greater of:

1.-3. (No change.)

(h) Notwithstanding the provisions of (g) above, complimentary cash gifts which are provided to persons pursuant to complimentary incentive programs regulated by N.J.A.C. 19:45-1.9(f), complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g) or complimentary distribution programs regulated by N.J.A.C. 19:45-1.46 shall be governed by any limitations contained in those respective rules and shall not be subject to the annual limits specified in (g) above.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Gaming Chips; Value and Non-value; Physical Characteristics

Non-value Chips; Impressment and Inventory; Permitted Uses

Nature and Exchange of Gaming Chips

Proposed Amendments: N.J.A.C. 19:46-1.1 and 1.5

Proposed Repeal and New Rule: N.J.A.C. 19:46-1.4

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

Authority: N.J.S.A. 5:12-63(c), 69, 70(i), (l) and (m), 99(a)(15), and 100(d).

Proposal Number: PRN 1993-386.

Submit written comments by August 18, 1993 to:
Leonard J. DiGiacomo, Senior Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The technology for the design and manufacture of gaming chips has changed since gaming was first introduced in Atlantic City, and it is anticipated that further technological advances will be made in the future. To the extent that gaming chips can be designed and manufactured under technological advances which continue to ensure the integrity of gaming by, among other things, minimizing the risk of counterfeiting, then casino licensees should be able to avail themselves of that technology.

Accordingly, the proposed amendments and new rule create greater flexibility in the standards for the design and manufacture of gaming chips, while simultaneously demanding that any chips so designed and manufactured continue to meet the rigorous standards for integrity and security as currently required. Towards that end, the proposed amendments and new rule add new terminology and restructure existing provisions in order to describe the required physical characteristics for the types of gaming chips that casino licensees will be permitted to use.

In particular, those chips which are constructed as a single piece with two flat surfaces will continue to be permitted under the proposed amendments, but such chips will now be required to have only once on each face of the chip the denomination of the chip and the name, trade name, or other approved identification of the casino licensee issuing them.

When the gaming chip regulations were originally written, roulette was the only game at which "non-value" chips could be used. Pokette has been added to that list, and there are other games which, if authorized by the Commission, would also require "non-value" chips, that is, chips which have no specific denomination but which are assigned, on a per-player basis, a value depending upon the "buy-in" of that player, who is entitled to use those chips only at that one game, and then only on that occasion.

In the main, however, the gaming chip regulations treat roulette as the only game where "non-value" chips are necessary, and create somewhat unwieldy exceptions thereto in order to deal with the new games, variations or composites at which "non-value" chips are also used. Thus, the proposed amendments and new rule, upon adoption, will also simplify the procedures that will need to be followed in the event the Commission authorizes other games at which "non-value" chips are used.

The proposed amendments and new rule also reorganize the general structure of the chip regulations. In doing so, the proposed amendments and new rule, to the greatest extent possible, incorporate existing requirements and make no substantive changes in the standards that apply to gaming chips. For that matter, the proposed amendments and new rule, as previously mentioned, relax in some instances the requirements for the design of gaming chips, provided the chips continue to meet strict security standards.

For example, those provisions on the impressment and inventory of non-value chips and on their permitted uses are removed from the section describing a gaming chip's physical characteristics, and are transferred to N.J.A.C. 19:46-1.4, which has been amended to deal exclusively with those topics.

Additionally, those provisions on the exchange of non-value chips are being moved from the section which describes the physical characteristics of chips to where they more properly belong in N.J.A.C. 19:46-1.5 on the nature and exchange of chips. Minor technical changes are also being made to that section to make clear that non-value chips may only be redeemed from patrons for value chips, that a casino licensee, consistent with N.J.S.A. 5:12-100k, is obligated to redeem its value chips for one of its casino checks, rather than cash, only upon request of a patron who surrenders value chips in excess of $25.00, and that a casino licensee may redeem, pursuant to a system submitted to and approved by the Commission, its value chips that are presented by any other legally operated casino licensee.

Subsections (b) and (e) of the proposed amendments to N.J.A.C. 19:46-1.1 are presented in the alternative. Under Alternative A for subsection (b), gaming chips will be permitted which have the exact measurements specified in the proposal for their diameter, thickness and weight, whereas Alternative B proposes that gaming chips will be permitted to have a thickness and weight falling within a specified range. Under Alternative A for subsection (e), the depth of any indentations or impressions contained on a face of a gaming chip cannot exceed 0.00625 inches, whereas Alternative B would permit any indentations or impressions which do not exceed five percent of the thickness of the chip. These alternative proposals may be adopted in any combination.

Under the current regulations, the Commission may approve value chips in denominations of $1,000 or $5,000 that do not meet any of the requirements set forth in the regulations, provided that in doing so the control, security and integrity of the chips, and the operation of the games, are not affected. The Commission has exercised that authority to approve high denomination chips which have a larger diameter than the diameter of chips of lower denominations. Given the Commission's limited exercise of that authority in the past, the proposed amendments permit the Commission to approve high denomination value chips that are one and 11/16ths inches in diameter, but require those chips to comply with all other applicable standards.

Social Impact

There will be little social impact as a result of the proposed new rule and amendments because they only specify the design characteristics for gaming chips, make technical amendments, or reorganize already existing requirements on non-value chip inventory and impressment, and the permitted uses thereof. As mentioned in the Summary, the amendments do provide the casino licensees more flexibility regarding chip design without jeopardizing the integrity of operations.

Economic Impact

By giving casino licensees more options for the designs of chips which they can use in their facilities, the Commission anticipates that casino licensees may experience cost-savings through a decrease in the price they pay to have chips manufactured due to an increase in competition among those companies which design and manufacture chips.

The Commission anticipates that the additional costs, if any, to casino licensees seeking to comply with the proposed amendments will be nominal.

Of course, if there is an increase in competition among chip manufacturers as a result of the proposed amendments and new rule, then the Commission anticipates those companies which are unable to compete effectively may suffer adverse economic consequences. However, any such negative consequences are a product of the marketplace, rather than a direct result of the proposed amendments.

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Regulatory Flexibility Statement

Under the Commission's existing regulations, casino service industries, some of which may be a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., are required to be licensed in order to provide goods and services, such as gaming chips, to casino licensees on a regular and continuing basis. The proposed amendments and new rule do not modify those licensing requirements.

Further, casino service industries which supply gaming chips to casino licensees are currently required to adhere to existing standards on the design and manufacture of gaming chips. The proposed amendments and new rule merely provide greater flexibility by increasing the permissible designs for such chips.

Accordingly, no regulatory flexibility analysis is required because the proposed amendments and new rule impose no additional reporting, record-keeping or other compliance requirements on any such casino service industries, and because none of the casino licensees which will be directly affected by the proposed amendments and new rule is a small business.

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

19:46-1.1 Gaming chips; value and non-value; physical characteristics

[(a) Each gaming chip issued by a casino shall be round in shape, be 1-9/16 inches in diameter and have clearly and permanently impressed, engraved or imprinted thereon the name of the casino issuing it and the specific value of the chip except that a casino may issue gaming chips without a value impressed, engraved or imprinted thereon for the purpose of gaming at roulette. Gaming chips with a value contained thereon shall be known as "value chips" and gaming chips without a value contained thereon shall be known as "non-value chips".

(b) Value chips may be issued by a casino licensee in denominations of $.50, $1.00, $2.50, $5.00, $20.00, $25.00, $100.00, $500, $1,000 and $5,000. It, however, shall be within the discretion of the casino licensee to determine which of these denominations will be utilized in its casino or casino simulcasting facility and what amount of each denomination will be necessary for the conduct of gaming operations.]

(a) Each gaming chip issued by a casino licensee for use in gaming or simulcast wagering in its casino or casino simulcasting facility shall strictly comply with the requirements of the Act and this subchapter.

ALTERNATIVE A
FOR SUBSECTION (b)

(b) Each gaming chip issued by a casino licensee shall be in the form of a disk and shall have: a uniform diameter of one and 9/16ths inches (39.69mm); a uniform thickness of 0.125 inches (3.18mm), unless the gaming chip contains indentations or impressions approved pursuant to (e) below, and a weight of 0.353 ounces (10 grams). Each of the two surfaces of a gaming chip across which the diameter of the chip can be measured shall be known as a "face." The surface of a gaming chip across which its thickness can be measured in a perpendicular line from one face to the other shall be known as its "edge."

ALTERNATIVE B
FOR SUBSECTION (b)

(b) Each gaming chip issued by a casino licensee shall be in the form of a disk and shall have: a uniform diameter of one and 9/16ths inches (39.69mm); a uniform thickness that is no less than 0.120 inches (3.05mm) and no greater than 0.140 inches (3.56mm), unless the gaming chip contains indentations or impressions approved pursuant to (e) below, and a weight that is no less than 0.282 ounces (eight grams) and no more than 0.370 ounces (10.5 grams). Each of the two surfaces of a gaming chip across which the diameter of the chip can be measured shall be known as a "face." The surface of a gaming chip across which its thickness can be measured in a perpendicular line from one face to the other shall be known as its "edge."

(c) No gaming chip shall be issued by a casino licensee or utilized in a casino or casino simulcasting facility unless and until:

1. The design specifications of the proposed gaming chip are, prior to the manufacture of the gaming chip, submitted to and approved by the Commission, which submission shall include a detailed schematic depicting the actual size and, as appropriate, location of the following:

i. Each face;

ii. The edge; and

iii. Any colors, words, designs, graphics or security measures contained on the gaming chip; and

2. A sample gaming chip, manufactured in accordance with its approved design specifications, is submitted to and approved by the Commission.

(d) No casino licensee shall issue or use in its casino or casino simulcasting facility any gaming chip which is materially different from the sample of that gaming chip approved by the Commission.

ALTERNATIVE A
FOR SUBSECTION (e)

(e) Any indentation or impression contained on the face of a gaming chip shall be approved by the Commission and shall not exceed a depth of 0.00625 inches (0.1588mm). An approved gaming chip which contains no indentations or impressions on either face, that is, a gaming chip on which each face of the chip has its entire surface in the same geometric plane, shall be known as a "flat-surface" chip.

ALTERNATIVE B
FOR SUBSECTION (e)

(e) Any indentation or impression contained on the face of a gaming chip shall be approved by the Commission and shall not exceed a depth of five percent of the thickness of the gaming chip. An approved gaming chip which contains no indentations or impressions on either face, that is, a gaming chip on which each face of the chip has its entire surface in the same geometric plane, shall be known as a "flat-surface" chip.

(f) Each face of a gaming chip issued by a casino licensee shall be designed and manufactured, in a manner approved by the Commission after consultation with the Division, with sufficient graphics or other security measures so as to prevent, to the greatest extent possible, the counterfeiting of such gaming chip.

(g) Each gaming chip issued by a casino licensee shall be either:

1. A "one-piece" chip, that is, a chip which is one integrated unit made entirely of plastic or any other substance approved by the Commission; or

2. A "two-piece" chip, that is, a chip with a separate, circular center insert made of metal, plastic or any other substance approved by the Commission, surrounded by and not readily detachable from a circular rim made of clay, plastic or any other substance approved by the Commission.

(h) Each gaming chip which contains a denomination on each face thereof shall be known as a "value chip." Each gaming chip which does not contain a denomination on either face thereof shall be known as a "non-value" chip.

(i) A casino licensee shall be authorized to issue and use value chips in denominations of $.50, $1.00, $2.50, $5.00, $20.00, $25.00, $100.00, $500, $1,000 and $5,000, and in such quantities as the casino licensee may deem appropriate to conduct gaming or simulcast wagering in its casino or casino simulcasting facility. A casino licensee may issue value chips in denominations of $1,000 or $5,000 which have a uniform diameter of one and 11/16th inches (42.86mm), provided that each such chip otherwise complies with the provisions of this subchapter.

(j) Each value chip issued by a casino licensee shall contain certain identifying characteristics which shall appear at least once in the identical manner on each face of the gaming chip and shall be applied by a method which ensures that each such characteristic shall remain a permanent part of the gaming chip. These characteristics shall, at a minimum, include:

1. The denomination of the value chip, expressed in numbers;

2. The name, trade name, or other approved identification of the casino licensee issuing the value chip;

3. The primary color of the value chip; and

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4. A unique center design in a shape approved by the Commission which readily distinguishes each denomination of value chip from every value chip of a different denomination issued by the casino licensee and which, for two-piece chips, incorporates the circular center insert into the design shape.

(k) Each value chip issued by a casino licensee, other than a one-piece, flat-surface chip, shall contain, in addition to the characteristics required by (j) above, the information required by (j)1 and 2 above in a second location on each face of the gaming chip. In the case of a two-piece chip, the information required by (j)1 and 2 above shall be contained at least once on the rim and at least once on the circular center insert of each face of the gaming chip.

[(c)]**(1)** Each **face of a particular** denomination of value chip [shall have a different primary color from every other denomination of value chip.] **issued by a casino licensee shall contain a predominant color unique to that denomination to be known as the "primary color." Any color other than the primary color which is used on a particular denomination of value chip shall be known as a "secondary color." A primary or secondary color, when viewed both in daylight and under incandescent light, shall be within the tolerances established in this subsection.** The primary color to be utilized by each casino licensee for each denomination of value chip shall be **as follows**:

1.-10. (No change.)

[11. Chip colors shall fall within the above tolerances when such chips are viewed both in daylight and under incandescent light. In conjunction with the aforementioned primary colors, each casino licensee shall utilize contrasting secondary colors for the edge spots on each denomination of value chip. Unless otherwise approved by the Commission, no casino licensee shall use a secondary color on a specific denomination of chip identical to the secondary color used by another casino licensee on that same denomination of chip.

(d) Each denomination of value chip utilized in a casino or casino simulcasting facility shall, unless otherwise authorized by the Commission.

1. Have its center portion, which contains the value of the chip and the name or trade name of the casino licensee issuing it, of a different shape for each denomination of chip;

2. Have the name, trade name, or other approved identification of the casino licensee issuing it and the denomination of such chip molded into the outer rim of the chip;

3. Have its circumference so designed so as to be able to determine on closed circuit black and white television the specific denomination of such chip when placed in a stack of chips of other denominations; and

4. Be designed, manufactured and constructed so as to prevent, to the greatest extent possible, the counterfeiting of such chips.

(e) Notwithstanding the above, the Commission shall have the discretion to approve a value chip in the denomination of $1,000 or $5,000 at variance with the requirements of this section provided that any variation is specifically identified as such by the casino licensee and approved as an acceptable alternative by the Commission and provided further that said variation does not affect control, security or integrity of said chips or the operation of the games.]

(m) The edge of each value chip issued by a casino licensee shall contain an identifying characteristic, to be known as an "edge spot," which shall be unique to each denomination of value chip. The edge spot on each value chip shall:

1. Be applied by a method which ensures that the edge spot shall remain a permanent part of the gaming chip;

2. Be created by using one or more secondary colors and the primary color of the chip; and

3. Consist, at a minimum, of a design or color pattern which a natural person with adequate training could readily use to identify, when viewed through a closed circuit black and white television system approved by the Commission, the denomination of each value chip when a value chip is placed in a stack of chips, in the table inventory or in any other location where only the edge of the value chip is visible.

(n) The edge spot used on a value chip of a particular denomination shall be unique to the casino licensee which issues the chip and shall not be used by any other casino licensee unless otherwise approved by the Commission.

[(f)]**(o)** Each non-value chip utilized in a casino or casino simulcasting facility shall be issued solely for the purpose of gaming at roulette, **pokette or any other authorized game which the Commission determines is appropriate for the use of non-value chips.** The non-value chips at each [roulette] **gaming** table shall[:] **be used only at the gaming table to which the non-value chips are assigned.**

(p) Each non-value chip issued by a casino licensee shall contain certain identifying characteristics which shall appear at least once in the identical manner on each face of the gaming chip and shall be applied in a manner which ensures that each such characteristic shall remain a permanent part of the gaming chip. These characteristics shall, at a minimum, include:

1. [Have the] **The** name [or], trade name **or other approved identification** of the casino licensee issuing [them molded into the center of such chip] **the non-value chip**;

2. [Contain a] **A** design, insert or symbol [differentiating those] **which will permit a set of non-value** chips **being used at a particular gaming table to be distinguished** from the non-value chips being used at every other [roulette] **gaming** table in the casino or casino simulcasting facility;

3. [Have] **The name of the particular authorized game at which the non-value chip shall exclusively be used; provided, however, that a casino licensee may use a non-value chip which otherwise complies with the applicable provisions of this section and contains the word** "Roulette" [impressed in the rim] **on the faces thereof at any authorized game which the Commission determines is appropriate for the use of non-value chips**; and

4. [Be designed, manufactured and constructed so as to prevent, to the greatest extent possible, the counterfeiting of such chips.] **Such color combinations as the Commission may approve, using the colors specified in (1) above, so as to permit the non-value chips of each player at a particular gaming table to be distinguished from the non-value chips of every other player at the same gaming table.**

[(g)]**(q)** [Each casino licensee shall utilize contrasting secondary colors or designs for the edge spots] **The edge of each non-value chip issued by a casino licensee shall contain an identifying characteristic, to be known as an "edge spot," which shall be unique to each color combination of non-value chip contained in a set of non-value chips which contain the same face design, insert or symbol as required by (p)2 above. The edge spot** on non-value chips **shall:**

1. Be applied by a method which ensures that the edge spot shall remain a permanent part of the gaming chip;

2. Be created using the same color as the face of the particular non-value chip, in combination with one or more other colors specified in (1) above; and

3. Consist, at a minimum, of a design or color pattern which a natural person with adequate training could readily use to identify, when viewed through a closed circuit black and white television system approved by the Commission, the player to which the non-value chip has been assigned when the non-value chip is placed in a stack of chips or in any other location where only the edge of a non-value chip is visible.

[(h) Nothing in this section shall preclude a casino licensee from using non-value chips approved for use in roulette at the game of pokette.

(i) Non-value chips issued at a roulette or pokette table shall only be used for gaming at that table and shall not be used for gaming at any other table in the casino or casino simulcasting facility nor shall any casino licensee or its employees allow any patron to remove non-value chips from the table from which they were issued.

(j) No person at a roulette or pokette table shall be issued or permitted to game with non-value chips that are identical in color and design to value chips to non-value chips being used by another person at the same table. When a patron purchases non-value chips, a chip of the same color shall be placed in a slot or receptacle attached to the outer rim of the roulette wheel or, for pokette, in such other device as approved by the Commission. At that time,

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a marker button denoting the value of a stack of 20 chips of that color shall also be placed in the slot, receptacle or other device.

(k) Non-value chips shall only be presented for redemption at the table from which they were issued and shall not be redeemed or exchanged at any other location in the casino or casino simulcasting facility. When so presented, the dealer at such table shall exchange them for an equivalent amount of value chips which may then be used by the patron in gaming or redeemed as any other value chips.

(l) Each casino licensee shall have the discretion to permit, limit or prohibit the use of value chips in gaming at roulette and pokette provided, however, that it shall be the responsibility of the casino licensee and its employees to keep accurate account of the wagers being made at roulette and pokette with value chips so that the wagers made by one player are not confused with those made by another player at the table.

(m) An impressment of each roulette table on the gaming floor shall be completed at least once a week. A casino licensee shall not complete a roulette table impressment unless it provides at least one-half hour prior notice to the Commission. The casino licensee shall record the results of such impressment in the Chip Inventory Ledger and shall utilize a "Non-Value Roulette Chip Impressment" form to perform such impressments as follows:

1. A casino department supervisor shall complete the "Non-Value Roulette Chip Impressment" form to record missing and excess chips and shall deliver the form and excess chips to the main bank or fill bank;

2. Upon receipt of the "Non-Value Roulette Chip Impressment" form a main bank cashier or fill bank cashier shall immediately prepare the chips needed to impress the table; and

3. The casino department supervisor shall then deliver, directly to the appropriate table, the chips needed to impress that table.

(n) The completed "Non-Value Roulette Chip Impressment" form shall be maintained by the Accounting Department and shall contain, at a minimum, the following:

1. Date and time of preparation;

2. Design schematic of the chip and the applicable table number;

3. Signature of the casino department supervisor who completes the "Non-Value Roulette Chip Impressment" form and the roulette table impressment; and

4. Signature of the main bank cashier or fill bank cashier preparing the impressment.

(o) Each casino licensee shall submit to the Commission and Division a monthly summary of the non-value chip inventory for each table/design by color which shall include, at a minimum, the following:

1. The balance on hand at the beginning of the month;

2. The number of non-value chips distributed to the gaming tables during the month;

3. The number of non-value chips returned to inventory during the month; and

4. The balance on hand at the end of the month.

(p) No casino licensee shall issue or cause to be utilized in its casino or casino simulcasting facility any value or non-value chips unless and until such chips are approved by the Casino Control Commission. In requesting approval of such chips, a casino licensee, prior to having any such chips manufactured, shall first submit to the Commission a detailed schematic of its proposed chips which shall show the front, back and edge of each denomination of value chip and each non-value chip and the design and wording to be contained thereon all of which shall be depicted on such schematic as they will appear both as to size and location, on the actual chip. Once the design schematics are approved by the Commission, no value or non-value chip shall be issued or utilized until and unless a sample of each denomination of value chip and each color of non-value chip is also submitted to and approved by the Commission.]

[(q)]**(r)** No casino licensee or other person licensed by the Commission shall manufacture for, sell to, distribute to or use in any casino outside of Atlantic City, any value or non-value gaming chips having the same edge **spot and** design **specifications** as those approved for use in Atlantic City casinos and casino simulcasting facilities.

19:46-1.4 [Submission of gaming chips and plaques for review and approval] **Non-value chips; permitted uses; inventory and impressment**

[Each casino licensee shall submit to the Commission a sample of each denomination of gaming plaque and a sample of each value and non-value chip in its primary and secondary sets and shall not utilize such chips or plaques for gaming purposes until approved by the chairman.]

(a) Each non-value chip issued at a gaming table shall be used only for gaming at that table and shall not be used for gaming at any other table in the casino or casino simulcasting facility. No casino licensee or any employee thereof shall allow any patron to remove a non-value chip from the table at which it was issued.

(b) No patron at a gaming table shall be issued or permitted to game with non-value chips that are identical in color and design to any non-value chip issued to any other patron at the same table. When a patron purchases non-value chips at a gaming table, the casino licensee shall designate, in a manner to be approved by the Commission, the value to be assigned to each chip of the particular color and design issued to the patron.

(c) An impressment of the non-value chips assigned to each gaming table shall be completed at least once a week. A casino licensee shall not perform a non-value chip impressment unless it provides at least one-half hour prior notice to the Commission. The casino licensee shall record the results of the impressment in the chip inventory ledger required pursuant to N.J.A.C. 19:46-1.6 and shall perform the impressment as follows:

1. A casino department supervisor shall complete a "Non-Value Chip Impressment" form to record missing and excess chips and shall deliver the form and excess chips to the main bank or fill bank;

2. Upon receipt of the "Non-Value Chip Impressment" form, a main bank cashier or fill bank cashier shall immediately prepare the chips needed to impress the table; and

3. The casino department supervisor shall then deliver, directly to the appropriate table, the non-value chips needed to impress that table.

(d) The completed "Non-Value Chip Impressment" form shall be maintained by the accounting department and shall contain, at a minimum, the following:

1. The date and time of preparation;

2. The design schematic of the chip and the applicable table number;

3. The signature of the casino department supervisor who completes the "Non-Value Chip Impressment" form and the impressment for such table; and

4. The signature of the main bank cashier or fill bank cashier preparing the impressment.

(e) Each casino licensee shall submit to the Commission and Division a monthly summary of the non-value chip inventory for each gaming table by non-value chip design and color. The monthly summary shall include, at a minimum, the following:

1. The balance on hand at the beginning of the month;

2. The number of non-value chips distributed to the gaming table during the month;

3. The number of non-value chips returned to inventory during the month; and

4. The balance on hand at the end of the month.

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques

(a) (No change.)

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables [and]**. Gaming plaques and value chips** shall only be redeemed at the cashiers' cage; provided, however, that [gaming] **value** chips may be exchanged by a patron at the slot booths for coin or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 to play the slot machines and may be used for simulcast wagering.

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(c) Non-value chips shall be presented for redemption only at the gaming table from which they were issued and shall not be redeemed or exchanged at any other location in the casino or casino simulcasting facility. When non-value chips are presented for redemption, the dealer shall accept them in exchange for an equivalent amount of value chips which may then be used by the patron in gaming or simulcast wagering or redeemed in the same manner as any other value chips.

(d) Each casino licensee shall have the discretion to permit, limit or prohibit the use of value chips in gaming at roulette or any other authorized game which the Commission determines is appropriate for the use of non-value chips; provided, however, that it shall be the responsibility of the casino licensee and its employees to keep an accurate account of the wagers being made with value chips at any such game so that the wagers being made by each player are readily distinguishable from those being made by every other player at the table.

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

[(f)]**(h)** Each casino **licensee** shall redeem promptly its own genuine gaming chips and plaques [by]**, except when the gaming chips or plaques were obtained or being used unlawfully. A casino licensee shall redeem value chips or gaming plaques by exchanging them for an equivalent amount of** cash or [by]**, upon request by a patron who surrenders value chips or gaming plaques in any amount over $25.00, for a casino** check **of that casino licensee in the amount of the chips or plaques surrendered and** dated the day of such redemption [on an account of the casino licensee as requested by the patron, except when the gaming chips or plaques were obtained or being used unlawfully]. Slot tokens shall be redeemed or exchanged in the following manner:

1.-2. (No change.)

[(g)]**(i)** Each casino licensee shall have the right to demand the redemption of its gaming chips, slot tokens or plaques from any person in possession of them and such person shall redeem said chips, slot tokens or plaques upon presentation [of an equivalent amount of cash] by the casino **licensee of cash in an equivalent amount or, in the case of non-value chips, upon presentation by the casino licensee of an equivalent amount of value chips in accordance with (c) above**; provided, however, that slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchanged in accordance with [(f)2] **(h)2** above.

[(h)]**(j)** (No change in text.)

[(i)]**(k)** A casino licensee shall redeem promptly its own genuine [gaming] **value** chips, **slot** tokens and plaques [from] **presented by** other legally operated casino licensees upon the representation that such **value** chips, tokens and plaques were received or accepted unknowingly, inadvertently or in error, were unavoidably received in slot machines through patron play or were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange of [foreign gaming chips, tokens and plaques] **tokens, plaques and value chips:**

1. That are in its possession and that have been issued by any other legally operated casino licensee; and

2. That it has issued and that are presented to it for redemption by any other legally operated casino licensee.

Recodify existing (j) through (k) as **(l) through (m)** (No change in text.)

HEALTH

(a)

VITAL RECORD SERVICES

Access to Death Records

Proposed New Rules: N.J.A.C. 8:2A

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 26:8-23.

Proposal Number: PRN 1993-379.

Submit comments by August 18, 1993 to:

Charles A. Karkut
Bureau of Vital Statistics and Registration
New Jersey Department of Health
CN 370
Trenton, New Jersey 08625-0370
609-292-4589

The agency proposal follows:

Summary

The Department of Health is proposing to create procedures by which death records may be viewed by and/or issued to the general public. The intent of these proposed new rules is to assure that requests for certified copies of death records are honored, while protecting the confidentiality of certain personal information on the record, which is collected for public health purposes.

Doctors and individuals who are related to a decedent are required to provide personal and sensitive medical information on death records pursuant to N.J.S.A. 26:6-7. Statutes such as the Cancer Registry, N.J.S.A. 26:2-107, the AIDS Assistance Act, N.J.S.A. 26:5C-12 and Registration-Vital Statistics Act, N.J.S.A. 26:8-40.23, require that this type of information be kept confidential. N.J.S.A. 26:8-62 requires that copies of death certificates be provided to the public upon request. Therefore, in order to provide the public with copies of death records, while complying with the statutory requirements concerning the confidentiality of certain information contained on those records, the following rules are being proposed:

N.J.A.C. 8:2A-1.1 sets forth chapter definitions.

N.J.A.C. 8:2A-1.2 describes who may access death records, defines what items are shown on certification of death records and delineates when the disclosure of the last sickness and death particulars of any individual may be released.

Social Impact

The proposed amendment will have a beneficial impact on the public. The general citizenry will be assured that procedures surrounding the release of information provided on death records are clearly delineated and that personal and sensitive medical information will be kept confidential.

Economic Impact

The proposed new rules would have no economic impact on the Department or on the public since no cost is associated with these rules.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since these rules do not require any reporting, recordkeeping, or other compliance requirements on small businesses. The rules govern access to death records maintained by the government.

Full text of the proposed new rules follows:

CHAPTER 2A
DEATH RECORDS

SUBCHAPTER 1. ACCESS TO DEATH RECORDS

8:2A-1.1 Definitions

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

"Commissioner" means the State Commissioner of Health.

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"Department" means the New Jersey State Department of Health.

"Informant" means the name of the individual providing the personal particulars for the preparation of the birth certificate.

"State Registrar" means the New Jersey State Registrar of Vital Statistics.

8:2A-1.2 Access to death records

(a) The State Registrar or other custodian of vital records shall supply, upon request of any applicant, a certified copy of any death record, provided the required statutory search fee is submitted, except where such fee is excluded by statute or regulation.

1. The certification or certified copy shall include, at a minimum, the name of the decedent, place of death (county, city), date of death, social security number, sex, date of birth, State file number and date of issuance, providing this information is available.

2. The certification may include other information; however, the last sickness and death particulars (cause of death and medical particulars) will only be included on the certification or certified copy of the death record if the applicant completes a certification in the form set forth in Appendix A, incorporated herein by reference, that he or she is related to the decedent as follows:

i. Executor, administrator of the estate, or authorized representative of the deceased person;

ii. Surviving spouse or caretaking partner;

iii. If there is no spouse or caretaking partner, then by another authorized member of the family;

iv. A parent, guardian, or other individual authorized under State law to act in a minor's behalf; or

v. The Commissioner, at his or her discretion, in the event that a deceased person has neither an authorized representative nor next of kin as defined above in (a)2i through iv above.

3. Any of the relatives to the decedent in (a)2i through v above may consent to the release, to a third party, of a death certificate containing cause of death and medical particulars. Such consent must also be provided in the form of a certification as set forth in Appendix A.

4. Any certified copy of a death certificate, with or without last sickness and death particulars, may be released without consent under the following conditions:

i. To qualified personnel for the purpose of conducting scientific research, but a record shall be released for research only following review of the research protocol by an Institutional Review Board constituted pursuant to Federal regulation 45 C.F.R. 46.101 et seq. The person who is the subject of the record shall not be identified, directly or indirectly, in any report of the research, and research personnel shall not disclose the person's identity in any manner;

ii. To qualified personnel for the purpose of conducting management audits, financial audits or program evaluation, but the personnel shall not identify, directly or indirectly, the person who is the subject of the record in a report of an audit or evaluation, or otherwise disclose the person's identity in any manner. Identifying information shall not be released to the personnel unless it is vital to the audit or evaluation;

iii. To the Department as required by State or Federal law; or

iv. As permitted by rules adopted by the Commissioner for the purposes of disease prevention and control.

(b) The State Registrar or other custodian of vital records shall not permit physical inspection and/or access to the full death record nor shall he or she disclose information, copy or issue the full record unless he or she is satisfied that the applicant is authorized to obtain a full copy of such record, as listed in (a)2, 3 and 4 above.

APPENDIX A

Certification

Date: _____

I, _____, _____,
(Applicant) (Relationship)
to decedent, hereby authorize the issuance of a certification of the death record of _____,
disclosing the cause of death section. I certify that the above information, supplied by me, is true. I am aware that I am subject to punishment if I have falsely supplied the above information.

_____
Signature

(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES

Pilot Low-Cost Spaying and Neutering Clinic Surgery Fees

Proposed New Rules: 8:23-6

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner of Department of Health.

Authority: N.J.S.A. 4:19A-11.

Proposal Number: PRN 1993-399.

Submit written comments by August 18, 1993 to:
Ms. Annette M. Hirsch, R.N., M.P.H.
Program Manager
Biological Services Program
Consumer Health Services
3635 Quakerbridge Road
CN 369
Trenton, NJ 08625-0369

The agency proposal follows:

Summary

P.L. 1989, c.93 authorizes the Commissioner of Health to increase any of the statutorily prescribed surgical fees upon a finding that the increase is necessary to sustain operation of the pilot spay/neuter clinic established for spaying and neutering dogs and cats pursuant to P.L. 1983, c.180. The Department has determined that an increase in fees is necessary and reasonable. The proposed new rules increase (by $5.00 per weight class) the surgical fees for all dogs and all male cats, and reiterate N.J.S.A. 4:19A-11E) concerning what immunizations the fees include.

Social Impact

People for Animals, Inc. Low-Cost Spaying and Neutering Clinic is located in Hillside, New Jersey. The clinic is available to all New Jersey residents, regardless of income. The clinic provides low-cost spaying and neutering of dogs and cats and is funded by a continuing Health Service Grant. For a reasonable cost to those who might not otherwise be able to afford it, the pilot clinic provides a valuable public service, thereby helping to control the number of stray and unwanted dogs and cats in the state. The clinic began operating in 1985. There have been 27,500 surgeries conducted at the clinic since its inception.

Economic Impact

The Pilot Clinic Grant is funded by a license surcharge. A 20-cent surcharge is collected for each dog licensed and is deposited in the Department's Pilot Clinic Trust Fund to be used exclusively for the funding of the clinic. The 1993 grant amount of State funding of the clinic is $85,000. The remainder of funds for operation of the clinic is obtained primarily from the surgery fees paid by the pet owners.

The increase in surgery fees is necessary to cover the costs of operating a spay/neuter clinic. The cost of operating the clinic in Fiscal Year (FY) 1992 was $238,000 and the amount of surgery fees generated in FY 1992 was $135,010. The People For Animals, Inc. Executive Board conducts fund raisers to supplement funding the operations of the clinic. Without the increase in the surgical fees the clinic would not be able to operate for the full grant year.

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Regulatory Flexibility Statement

The adoption of these new rules will impose no reporting, recordkeeping, or other compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All requirements of these new rules affect only the pilot spaying and neutering clinic, providing a statutorily-permitted fee increase and reiterating the statute's statement of the immunizations provided by the fee.

Full text of the proposed new rules follows:

SUBCHAPTER 6. PILOT LOW COST SPAYING AND NEUTERING CLINIC SURGERY FEES

8:23-6.1 Fees

The public may have dogs and cats spayed or neutered, as the case may be, in a humane manner by a licensed veterinarian at the pilot clinic upon payment of the following fees:

For spaying females dogs weighing	
Not more than 40 pounds	$40.00
41 to 60 pounds	45.00
Over 60 pounds	50.00
For spaying female dogs which are pregnant or in heat	55.00
For neutering male dogs weighing	
Not more than 40 pounds	30.00
41 to 65 pounds	35.00
Over 65 pounds	40.00
For spaying female cats of any weight	35.00
For spaying female cats which are pregnant or in heat	35.00
For neutering male cats of any weight	30.00

8:23-6.2 Immunizations included in fees

The fees shall include immunization of dogs against distemper, hepatitis, and leptospirosis and the immunization of cats against feline panleucopenia, pneumonitis and rhinotracheitis, which immunization shall be given at least 10 days prior to surgery on animals not previously immunized.

(a)

HOSPITAL REIMBURSEMENT

Hospital Financing

Proposed Amendments: N.J.A.C. 8:31B-1.1, 1.2, 3.1, 3.3, 3.11, 3.16, 3.17, 3.24, 3.26, 3.43, 4.2, 4.3, 4.4, 4.6, 4.12, 4.15, 4.16, 4.21, 4.24, 4.25, 4.31, 4.32, 4.33, 4.34, 4.54, 4.59, 4.61, 4.62, 4.64, 4.65, 4.66, 4.67, 4.72, 4.76, 4.77, 4.98, and 4.131

Proposed Repeals: N.J.A.C. 8:31B-3.2, 3.4, 3.5, 3.6, 3.7, 3.9, 3.10, 3.15, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.27, 3.28, 3.29, 3.30, 3.31, 3.32, 3.33, 3.34, 3.37, 3.38, 3.39, 3.40, 3.41, 3.42, 3.44, 3.45, 3.51, 3.52, 3.55, 3.57, 3.63, 3.64, 3.65, 3.73, 3.74, 3.75, 3.76, 3.87; N.J.A.C. 8:31B-5; Appendices I, III, IV, V, VI, VII, VIII, and XI

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1993-381.

Submit written comments by August 18, 1993 to:
Anne F. Weiss, Director
New Jersey Department of Health
Health Care Financing, Room 601
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The rules that previously governed the State's system of regulating hospital reimbursement under P.L. 1978, c.83 are proposed for revision herein. The Health Care Reform Act of 1992 (P.L. 1992, c.160) repealed the rate-setting provisions of Chapter 83, but retained the Department's role in supporting the public policy of the State that hospital and related health care services be of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost and, to this end, the Commissioner's authority to require all health care facilities to furnish necessary reports and information. Therefore, the Department will continue to require the reporting of accurate and comprehensive hospital cost and utilization data. These data are essential to the Department's ongoing functions, including the audit of the 1993 revenue cap and cost data. It will also be important to consumers and payers in the newly deregulated market. For example, accurate financial information will facilitate making comparisons of hospital performance for use by payers, investors and health care consumers.

This proposal deletes the rules which described the calculation of hospital's schedule of rates (N.J.A.C. 8:31B-3.2, 3.10, 3.21, 3.28, 3.29, 3.32, 3.33, 3.40 and 3.57), standards (N.J.A.C. 8:31B-3.5, 3.6 and 3.22), reasonable costs (N.J.A.C. 8:31B-3.23), costs per case (N.J.A.C. 8:31B-3.4), preliminary cost bases (N.J.A.C. 8:31B-3.7, 3.20 and 3.30), certified revenue bases (N.J.A.C. 8:31B-3.15), capital facilities allowance (N.J.A.C. 8:31B-3.27 and 3.55), Medicare cost shift (N.J.A.C. 8:31B-3.34), definition for direct and indirect cost (N.J.A.C. 8:31B-3.18 and 3.19), payer differential (N.J.A.C. 8:31B-3.39), rate implementation (N.J.A.C. 3.9 and 3.51), final reconciliation (N.J.A.C. 8:31B-3.44, 3.45, 3.57, 3.71, 3.73 through 3.75), full rate review (N.J.A.C. 8:31B-3.52), uncompensated care (N.J.A.C. 8:31B-41), schedule of rates (N.J.A.C. 8:31B-3.37, 3.38 and 3.42). Regulations governing procedures relating to the Hospital Rate Setting Commission rate adjustments (N.J.A.C. 8:31B-3.31 and 3.63 through 3.65 and 3.87) and the subchapter defining Diagnosis Related Groups (N.J.A.C. 8:31B-5) are also deleted.

This proposal maintains the rules which mandate reporting of hospital costs and define categories of financial elements and other costs for the purposes of standardizing accounting of and reporting hospital costs and revenues. These rules have been revised where necessary to delete references to the former hospital rate setting system (N.J.A.C. 8:31B-1.1, 1.2, 3.1, 3.11, 3.16, 3.17, 4.2, 4.4, 4.6, 4.12, 4.15, 4.16, 4.31 through 4.34, 4.54, 4.59, 4.62, 4.64 through 4.67). Provision is made for auditing of cost data and for a penalty of $200.00 per working day for late submission of cost or financial statement data (see N.J.A.C. 8:31B-3.3).

Revisions are also made to rules requiring the reporting by demonstration projects involving hospital-affiliated off-site outpatient facilities providing primary care (see N.J.A.C. 8:31B-3.24). Rules requiring the reporting of charges are maintained (N.J.A.C. 8:31B-3.43), but references to rate setting concepts are deleted. A provision is maintained for the calculation of economic and technology factors (N.J.A.C. 8:31B-3.26), reporting of hospital costs and revenues (N.J.A.C. 8:31B-4.61 and 4.72) and self insurance reporting guidelines (N.J.A.C. 8:31B-4.24). The rule on reporting of related organizations with an updated source and address for obtaining the Hospital Audit Guide to be used (N.J.A.C. 8:31B-4.25). An amendment is proposed to the procedure for reporting changes in debt financing for capital facilities (N.J.A.C. 8:31B-4.21; which requires a report to the Commission of any changes in debt financing), cost center clarification for the Intensive Care Unit and the Burn Care unit (N.J.A.C. 8:31B-4.76 and 4.77) and a spelling correction is made in the Physical Therapy cost center (N.J.A.C. 8:31B-4.98).

Appendices (I, III, IV, V, VI, and VII) depicting the cost report forms, (VIII) displaying the schedule of rates form, and Appendix XI, reimbursement methodology for graduate medical education, have ALL BEEN deleted.

The Financial Elements Report (N.J.A.C. 8:31B-4.131) has been revised to allow the Commissioner to refine the report forms for research purposes, to accommodate the requirements of the Federal system and the newly legislated New Jersey Essential Health Care Services Commission. For example, it may be necessary to group cost centers or split them further for specific analytical purposes. (N.J.A.C. 8:31B-3.3)

Social Impact

Continued collection of cost data is critical to most of the Department's public health activities including planning, licensing and consumer information. This data will enable the Department as well as hospitals, payers, consumers, employers and other interested parties to monitor

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hospital costs and revenues. Also, Chapter 160 established a new Essential Health Services Commission, which will have many responsibilities to review and evaluate data. The uniform reporting penalty section provides an additional assurance of accurate and timely data.

The Department's ability to audit this data will ensure its continued role in providing the public with accurate health care information. The annual cost reporting requirements are not considered to be more burdensome to hospitals than the Chapter 83 reporting requirements had been in previous years under that system.

Economic Impact

The continued availability of standardized audited information should make it easier for the benefits of market deregulation to be achieved. This data will allow the Department to continue to carry out other responsibilities affecting acute care hospitals, such as the evaluation of applications for Certificate of Need.

The uniform reporting penalty provision would assess a $200.00 per day penalty for late submissions of hospital current costs data and financial statements. The adverse financial impact of a penalty assessment is outweighted by the benefits of timely cost and financial data submissions from a public interest standpoint.

Regulatory Flexibility Statement

The proposed amendments apply to acute care general hospitals. Each of these hospitals employs more than 100 full-time employees and therefore does not fall into the category of small business as defined in N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 8:31B-3.2, 3.4, 3.5, 3.6, 3.7, 3.9, 3.10, 3.15, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.27 through 3.34, 3.37 through 3.42, 3.44, 3.45, 3.51, 3.52, 3.55, 3.57, 3.63, 3.64, 3.65, 3.73 through 3.75, 3.87, 8:31B-5, and Appendices I and III through XI.

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

CHAPTER 31B
HOSPITAL [RATE SETTING] **FINANCING**

SUBCHAPTER 1. GENERAL PROVISIONS

8:31B-1.1 Purpose and scope

The purpose of this chapter is to satisfy the requirements of [P.L. 1978, c.83 **the Health Care Facilities Planning Act, P.L. 1971, c.136 as amended by P.L. 1978, c.83; P.L. 1991, c.187; and P.L. 1992, c.160**, and support the public policy of the State that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost, be available to inhabitants of the State. [The rules in this chapter provide the procedures and methods by which the Department of Health and the Hospital Rate Setting Commission establish and maintain a fair and equitable system for determining hospital payments.]

8:31B-1.2 Definitions

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

. . .

"Base year" means the year from which historical cost data are utilized [to establish prospective reimbursement in the rate year].

["Certified Revenue Base (CRB)" means the preliminary cost base, as approved by the Hospital Rate Setting commission, which is sufficient to meet a hospital's needs in providing adequate and appropriate health care (see N.J.A.C. 8:31B-3.15).

"Chapter 83" refers to Public Law 1978, chapter 83, an Act concerning the provision of and payment for medical services and establishing a Hospital Rate Setting Commission.]

"Current Cost Base" means the actual costs and revenue of the hospital as identified in the Financial Elements in the base reporting period [for the purposes of rate setting (see N.J.A.C. 8:31B-3.16].

["Diagnosis Related Groups (DRGs)" means a patient classification system in which cases are grouped by shared characteristics of principal diagnosis, secondary diagnosis, age, surgical procedure, and other complications and consuming a similar amount of resources (see N.J.A.C. 8:31B-5.1).]

"Equalization Factor" means the factor that is calculated based on defined Labor Market Areas and multiplied by hospital costs to permit comparability between differing regional salary costs [in setting statewide standard costs per case (see N.J.A.C. 8:31B-3.22(d))].

"Financial Elements" means [the reasonable cost of items approved as reimbursable under Chapter 83] **those items of revenue, expenses and other data defined in N.J.A.C. 8:31B-4 for reporting to the Department of Health.**

["Full Rate Review means an examination of a hospital's entire cost base and operating structure in order to evaluate proposed payment.

"GROUPER" means the logic that assigns cases into the appropriate Diagnosis Related Groups in accordance with the clinical and statistical information supplied.

"Hospital Rate Setting Commission (HRSC)" means the appointed body of five members having the responsibility for approving an appropriate Schedule of Rates for all hospitals each year (see N.J.A.C. 8:31B-1.1.

"Inliers" means inpatient cases who display common or typical patterns of resource use, are assigned to DRGs and have a length of stay within the high and low trim points (see N.J.A.C. 8:31B-55.3).]

. . .

["Outliers" means patients who display atypical characteristics relative to other patients in a DRG and have lengths of stay either above or below the trim points (see N.J.A.C. 8:31B-3.38(c)2 and N.J.A.C. 8:31B-5.3).]

"Preliminary Cost Base" means the estimated revenue a hospital may collect based on an approved schedule of rates which includes DRG rate amounts and indirect costs not included in the all-inclusive rate. Those indirect costs will either be the dollar amount specified or the estimated amount determined by a specific percentage adjustment to the rate [(see N.J.A.C. 8:31B-3.23 and 3.27)].

["Prospective Operating Adjustment" means that amount by which hospital payment rates are increased if hospitals choose to implement their rates upon issuance and not undergo a full rate review. This adjustment is not related to an operating margin as defined in Generally Accepted Accounting Principles.]

["Rate Year"] **"Reporting Year"** means the year in which current [reimbursement takes place] **financial and statistical data is being reported.**

["Schedule of Rates" means the average amount of gross revenue per case that a hospital shall charge and payers shall pay for services related to patient care, in order to produce new revenue equal to the Preliminary Cost Base (see N.J.A.C. 8:31B-3.37).

"Trim points" means the high and low length of stay cutoff points assigned to each DRG.

"Uncompensated Care Trust Fund" means a fund established to administer the appropriate collection and distribution of payment for uncompensated hospital care (see N.J.A.C. 8:31B-7.1).]

. . .

SUBCHAPTER 3. [PROCEDURAL AND METHODOLOGICAL] **FINANCIAL MONITORING AND REPORTING** REGULATIONS

8:31B-3.1 Statement of purpose

[(a)] The following [Procedural and Methodological Regulations] **financial monitoring and reporting rules** in conjunction with Financial Elements (N.J.A.C. 8:31B-4), the Uniform Cost Reporting (N.J.A.C. 8:31A-5.5) and the Rules on Hospital Reporting of Uniform Bill—Patient Summaries regulations (N.J.A.C. 8:31B-2), constitute the minimum necessary steps for implementing [Chapter 83] **the Health Care Facilities Planning Act, P.L. 1971, c.136 as amended by P.L. 1978, c.83; P.L. 1991, c.187 and P.L. 1992, c.160.** These regulations should provide [a secure] **an** environment in which to move towards the objectives of an [equitable] **accurate** system of [payment] **monitoring and reporting.** This system meets the [full financial requirements of efficient and effective hospitals while] **purpose of the law, to** [insuring] **insure** the citizens of New Jersey economical provision of necessary and appropriate medical services of the highest quality.

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[(b) The Procedural Regulations establish the process through which the Commissioner of Health shall propose hospital rates to the Rate Setting Commission, the hospitals may respond, and the Commission shall make final determinations. The Methodological Regulations describe how the Commissioner shall arrive at the rates proposed; taken together, the Chapter 83 Regulations establish the criteria against which the Rate Setting Commission can evaluate arguments before it.]

8:31B-3.3 Uniform Reporting: Current Costs

(a) The Commissioner shall **collect and** review the actual costs for the institutions as reported in accordance with the Financial Elements and Reporting (N.J.A.C. 8:31B-4). [This review will be performed according to the methodology outlined below.] Costs so reported shall be subject to revision due to subsequent audits in accordance with [N.J.A.C. 8:31B-3.71 through 3.86.] **N.J.A.C. 8:31B-3.17.**

(b) Late submission of current cost data, as defined in N.J.A.C. 8:31B-4.6(c), including Audited Financial Statements, will result in penalties of $200.00 per working day past the appropriate submission date. [The penalty shall be reflected in the following years rates.]

8:31B-3.11 Same day surgery

(a) (No change.)

[(b) Hospitals shall report to the Commissioner in writing the existence, removal or other change in status of same day surgery programs and a description of the type of procedures performed and a list of the affected DRGs no later than April 30 prior to the issuance of the Proposed Schedule of Rates or Adjusted Rate Order.]

8:31B-3.16 Current Cost Base

(a) A hospital's Current Cost Base is defined as the actual costs and revenue as identified in the Financial Elements in the base reporting period as recognized by the New Jersey Department of Health [for purposes of rate-setting].

[(b) The Current Cost Base is used to develop the Preliminary Cost Base and Schedule of Rates through:

1. Determination of the costs of the mix of patients treated in the base year;

2. Identification of fixed and variable components of the Preliminary Cost Base;

3. Calculation of the operating margin as described in N.J.A.C. 8:31B-3.38(a)3;

4. Calculation of update factors as defined in N.J.A.C. 8:31B-3.26.]

[(c)]**(b)** The Current Cost Base is also used as the basis for the health care (hospital) **analysis and reporting** system [required pursuant to N.J.A.C. 8:31B-3.87].

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

8:31B-3.17 Financial elements reporting audit adjustments

(a) The aggregate Current Cost Base is developed from financial elements reported to New Jersey State Department of Health and includes:

1. (No change.)

2. Less net income from specified sources (as defined in N.J.A.C. 8:31B-3.25); **and**

3. Capital Facilities [Allowance] **Costs**: Capital cash requirements (as defined in N.J.A.C. [8:31B-3.27 and 8:31B-4.42);] **8:31B-4.21**).

[4. Adjustment to prompt payment discount (as defined in N.J.A.C. 8:31B-3.40).]

(b) All reported financial information shall be reconciled by the hospital to the hospital's audited financial statement. In addition, having given adequate notice to the hospital, the Department of Health may perform a cursory or detailed on-site review at the Department's discretion of all financial information and statistics to verify consistent reporting of data and extraordinary variations in data relating to the development of the [Preliminary] **Current** Cost Base (**CCB**). Any adjustments made subsequent to the financial review (including Medicare **and Medicaid** audits and New Jersey State Department of Health reviews) shall be brought to the attention of the Commissioner by the hospital, the Department of Health, appropriate fiscal intermediary or [payor] **payer** where appropriate[, pursuant to N.J.A.C. 8:31B-3.63 through 3.70 or N.J.A.C. 8:31B-3.71 through 3.86,] and shall be applied proportionately to the [Preliminary] Cost Base. [and Schedule of Rates (and to the extent pragmatic, applied to fixed and variable financial elements) at the time of the reconciliation to the Schedule of Rates (see N.J.A.C. 8:31B-3.71 through 3.86). All such adjustments shall be determined retroactively to the first payment on the Schedule of Rates and shall be applied prospectively. Any additional discrepancies determined beyond final reconciliation will be reflected in the hospital's current Schedule of Rates, if the net impact is greater than $50,000 or one percent of the hospital's total gross revenue.]

(c) Hospitals shall submit a complete list of exceptions to the proposed audit adjustments, together with appropriate written documentation, within 60 days of receipt of the Department's written summary of these adjustments, or these adjustments shall be implemented in accordance with (b) above. Consideration shall be given only to documentation submitted in accordance with this schedule. [Items previously reviewed under final reconciliation and other rate appeals shall not be included in this list of exceptions. Adjustments approved by the Hospital Rate Setting Commission shall be implemented in subsequent years rates.

(d) The Department must obtain Commission approval to make additional recommendations regarding any audit that has received final approval by the Commission. Reasons for obtaining Commission approval include, but are not limited to, fraud and material misrepresentation.]

8:31B-3.24 Off-site primary care

The Commissioner may establish[, and the Commission approve, rates for] demonstration projects involving hospital-affiliated off-site outpatient facilities providing primary care under an agreement with the Department of Health. For hospitals selected to participate in such programs, [rates may include start-up and other costs that are deemed necessary in order to provide comprehensive primary care services] **there may be reporting requirements, as defined in rules by the Department of Health, to evaluate these programs.**

8:31B-3.26 Update factors

(a) Economic Factor: An economic factor shall be calculated for each hospital. It shall take into account the level of hospital expenses and replacement cost of major moveable equipment, using the cost components reported to the New Jersey State Department of Health. The economic factor is the measure of the change in the prices of goods and services used by New Jersey hospitals. **The economic factor shall be based, as far as possible, on recorded price changes. For that part of the period covered by the economic factor for which recorded prices are unavailable, the economic factor shall be based on the best available forecast of price trends.**

1. The economic factor shall be determined by the Commissioner of Health prior to the beginning of each [rate] year. [The Commissioner's determination shall be based on the recommendations submitted by a panel of three health economic experts appointed by the Commissioner of Health.]

[2. The economic factor determined by this panel shall be used to adjust hospital rates prospectively, and it shall not be changed.]

[3. Among the factors the panel will consider must be]**2. The economic factor calculation shall include** the most current measure of inflation/deflation [In order to avoid a self-generating economic factor, the panel will use sources other than those driven significantly by policy decisions of the New Jersey hospital industry, such as actual increases in negotiated salary or contract costs. The economic factor] **and** will reflect changes in **a** fixed market basket of goods[. The panel] **as determined by the Commissioner. The economic factor** should not take into account changes in technology or disease entities as these are adjusted through the technology factor. [The panel will review written materials from all interested parties submitted in concert with panel-determined guidelines.

4. The Department shall provide appropriate staff to this panel.

5. An add-on of 0.01055 will be factored into the 1988-1992 labor portion of the economic factor.]

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(b) Cost Change Factor: An actual cost change factor shall be calculated for each hospital, in accordance with N.J.A.C. 8:31B-4. It shall take into account the level of hospital expenses and replacement costs of major moveable equipment, using the cost components reported to the New Jersey State Department of Health. The actual cost change factor is the actual measure of the change in the prices of goods and services used by New Jersey hospitals, to be based upon reported expenses.

[(b)]**(c)** Technology Factor: [Base-year direct patient care and indirect rates shall be multiplied in succeeding years by a technology factor to provide prospective funds to support hospital adoption of quality-enhancing technologies.] The technology factor shall be based on the Scientific and Technological Advancement Allowance recommended annually to the Secretary of the United States Department of Health and Human Services by the Prospective Payment Assessment Commission (ProPAC). The factor shall be composed of the proportion of incremental operating costs associated with ProPAC's identified cost increasing technologies.[, and ProPAC's allowances]. **Allowances** for technologies not included in the technology-specific projections, less the proportion of incremental operating costs of cost-decreasing technologies identified by ProPAC **will be included, if available**.

[1. For the initial rate year after the base year, base-year direct patient care and indirect rates will be multiplied by the product of the technology factors calculated for interim years between the base year and the rate year.

2. For each year that a hospital implements its rates as initially issued, and does not undergo a full rate review, the rates shall be updated prospectively by the technology factor calculated for that rate year.

(c) Prospective Operating Adjustment: For hospitals not receiving a full rate review, an additional two percent of direct and indirect costs shall be added to their current cost base.

1. The purpose of this adjustment is to compensate hospitals prospectively for expenses that may arise subsequent to the base year, including, but not limited to, the purchase of equipment, unusual cost increases in goods or services used by hospitals, changes in service mix, capital improvements, costs of mergers, acquisitions, and consolidations, and operating costs associated with Certificate of Need.

2. For direct patient care and indirects, if a portion of payment is based on standard, this adjustment shall assume 100 percent of the payment rate. The rates thus generated shall be increased by the amount of the prospective operating adjustment, based on base year volume and case-mix. For 1991 and subsequent years, it shall be based on actual volume and case-mix.

(d) In lieu of clinical and legal adjustments, hospitals not receiving a full rate review shall also have added to their current cost bases an additional 0.5 percent of direct and indirect costs, calculated as described in (c)2 above.

(e) Resident Adjustment Factor: This factor will account for three graduate medical education adjustments in addition to the hospital's teaching factor:

i. Costs associated with residents in excess of the hospital cap., as defined in N.J.A.C. 8:31B-3.31(b);

ii. Changes in the number of residents occurring after the base year; and

iii. Loss of program accreditation.

(f) For 1991 and 1992 only, payment for CN-approved psychiatric short-term care facility beds shall be in accordance with the Hospital Rate Setting Commission approved methodology for 1990 based on FTE cost per closed bed. The amounts shall be adjusted by the appropriate economic factor as described in (a) above.

(g) For 1991 and 1992 only, payment for patients in C-N approved child/adolescent psychiatric units shall be based on average costs for the hospitals reporting rates in base year 1988, adjusted by the appropriate economic factor as described in (a) above, and resulting in an appropriate DRG adjustment.

(h) For 1991 and 1992 only, educational costs related to sickle cell disease shall be based on 1990 annualized Commission-approved amounts, adjusted by the economic factor as described in (a) above.

(i) For 1992 only, payment for regional perinatal services shall be based on the Commission-approved methodology, adjusted by the appropriate economic factor as described in (a) above.

(j) For 1992 only, payment for start-up costs associated with trauma centers shall be based on the Commission-approved methodology, adjusted by the appropriate economic factor as described in (a) above.

1. For 1992 only, the Department shall apply a trauma adjustment factor. The trauma adjustment factor will be developed as follows:

i. For trauma hospitals, the adjustment factor to be multiplied by the Statewide standard is the ratio of costs in trauma-related DRGs, in CN-approved Level I trauma-designated hospitals, compared to the costs in these DRGs for non-trauma hospitals. The following trauma-related DRGs are included: 2, 210, 217, 533, 730, 731, 732, 733, 761 and 766.

ii. For non-trauma hospitals, the adjustment factor to be multiplied by the Statewide standard will be based on the ratio of the average cost by trauma-related DRG for all hospitals.

(k) The Department shall establish payment rates or methodologies for those DRGs for which experience in the base year was insufficient to set rates. Sources to be used in determining these rates will include, but not be limited to, cost, charge, and statistical data from New Jersey and/or other states. Rates so determined, with the exception of neonate rates, will apply to all patients in these DRGs, regardless of inlier/outlier status. Payment in 1992 will be as follows:

1. Liver Transplants: payment for DRG 480 will be $72,139 in 1988 dollars.

2. Heart Transplants: payment for DRG 103 will be $72,438 in 1988 dollars.

3. Cochlear Implants: payment for DRG 759 will be $21,608 in 1988 dollars.

4. Bone Marrow Transplants: payment for DRG 481 will be $46,599 in 1988 dollars.

5. Neonate rates, DRGs 600 through 630, will be based on 1989 actual New Jersey cost data.

(l) For 1992 only, payment of the Poison Information and Education System shall be based on the Commission-approved methodology, adjusted by the appropriate economic factor described in (a) above.

(m) Beginning in 1991, on or before July 1 of each year, the DOH, in consultation with representatives of hospitals, payers, the Public Advocate and other interested parties, may recommend to the Hospital Rate Setting Commission other prospective adjustments to hospital rates if it is determined that changes may be anticipated in the hospital environment that will affect a significant number of hospitals and will substantially exceed the projected update factors described in (a) through (d) above. Taking into account the effectiveness and efficiency of the health care system as a whole, the Commission may approve such adjustments for inclusion in the following year's Preliminary Cost Base/Certified Revenue Base.

(n) Once a hospital has had its rates determined by a full rate review, those rates shall not be increased by any of the update factors described in (a) through (h) above. Rates for years subsequent to the full rate review shall be adjusted by annual update factors. If additional full rate reviews are undergone only update factors for the rate years after the most recent full rate review shall be used in calculating rates until a new base year is used.]

8:31B-3.43 [Adjustment] **Reporting** of charges

(a) [Unless otherwise ordered by the Commission, the proposed Schedule of Rates shall be implemented on the first day of the month following 30 days after receipt of the Schedule of Rates. Fifteen working days prior to this implementation a hospital shall:

1. Adjust its current charges to reflect the Schedule of Rates and a uniform hospital charge to Direct Cost ratio across all revenue centers;

2. Submit to the Commissioner for review a completed revenue budget worksheet (Appendix V) described in N.J.A.C. 8:31B-3.38(b), projected to agree with the Schedule of Rates and;

3. Submit to the Commissioner a copy of its charges, as adjusted, and a declaration from the hospital's Chief Executive Officer attest-

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ing to the fact that, based on the best available estimates, such charges shall produce net revenue equivalent to the full financial elements, as approved in the Commissioner's Rate Order, and uniform cost to charge ratios by revenue centers. The hospital must notify the Commissioner of any charges adjusted throughout the period which significantly alter the overall estimates of net revenue to be collected. In addition, the] **A** hospital shall submit to the Commissioner a copy of its charges in use during the current [cost base] year **for review and monitoring purposes**. [Use and applicability of charges adjusted pursuant to this subsection shall be consistent with the subsection immediately below.

(b) The hospital may, subject to analysis and approval by the Department, adopt a plus or minus 20 percent variance applied to its charge to Direct cost ratio for any specific revenue center.]

[c]**(b)** [The] **A** hospital must notify the Commissioner of any charges adjusted throughout the [rate] year which alter overall estimates of net revenue to be collected.

[(d) The Commission may, permit cross-subsidies greater than those otherwise permitted herein so long as the hospital submits its request to the Commissioner in writing, providing documentation of the need for the subsidization and how it will be incorporated into the hospital's revenue budget worksheet and Schedule of Rates.]

8:31B-4.2 Functional versus responsibility reporting

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

(c) A hospital should structure its accounts for the purpose of managing a sound cost-effective and financially viable organization. In many instances, principally due to various budgetary control objectives, this goal may be better achieved through recording of expenses and revenues on a responsibility basis. However, it is highly unlikely that expenses and revenues recorded on a responsibility basis can be reported "as is" on the prescribed uniformed functional basis. This will necessitate the recast of expenses, revenue and statistics per N.J.A.C. 8:31B-4 [schedules in Section VI, as discussed herein]. Various reporting schedules provide the hospital with the opportunity to insure that the financial data used to develop the financial elements of the current Cost Base [and hence Preliminary Base and Schedule of Rates], despite the recasts and allocations involved, are equivalent to the hospital's own audited financial statements. A working knowledge of the principles, concepts and definitions included herein, especially with regard to the inclusion of specific functions within reporting centers and of the natural classifications of expense, is necessary for a hospital's accurate compliance with these reporting requirements.

8:31B-4.3 Prescribed reporting principles

(a) The reporting principles and concepts described in this chapter have been drawn from existing systems wherever possible. [Two significant modifications to Generally Accepted Accounting Principles have been made to recognize full financial elements of hospitals, mandated under the Health Care Facilities Planning Act of 1971, as amended 1978, and as recommended by the American Hospital Association.[1] These are the inclusion of Plant and Equipment as financial elements at Commission approved replacement costs, and the reporting of securities at market value.]

(b) (No change.)

[[1]American Hospital Association, Financial Requirements of Health Care Institutions and Services]

8:31B-4.4 Accounting entity

[(a)] (No change in text.)

[(b) For purposes of this manual the hospital reporting entity shall be defined as the Medicare provider in the year prior to a hospital's first Commission approved Preliminary Cost Base, unless otherwise determined by the Commission.]

8:31B-4.6 Reporting period

(a) The basic reporting period is the 12 consecutive calendar months utilized for Medicare [reporting in the year prior to the hospital's first Commission approved Preliminary Cost Base].

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

8:31B-4.12 Basis of valuation

(a) (No change.)

[(b) Although the basis for developing capital related financial elements will be Commission approved replacement costs of plant and equipment, where appropriate, per N.J.A.C. 8:31B-4.22 or 4.23, hospitals will be required to maintain records and report assets and related depreciation according to both historical values and price leveled values as prescribed in this manual.]

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

8:31B-4.15 Revenues and deductions from revenue

(a) If a hospital receives less than its full charges for the services it renders, it shall report to the Department both the gross revenue and revenue "adjustments" resulting from failure to collect full charges for services provided. These revenue adjustments are called Deductions from Gross Revenue. The specific deductions required for reporting Revenue Related to Patient Care, as defined in N.J.A.C. 8:31B-4.32 are defined in (a)1 through 11 below. Any individual allowance must be reported in only one of the 10 deduction categories and three contra categories (although individual transactions may be distributed among several if appropriate):

1. (No change.)

2. Prompt payment discounts: These adjustments are the difference between charges and payments received due to the prompt payment of a bill [in accordance with Section II.D. of the Financial Elements and Reporting regulation].

3. (No change.)

4. Courtesy adjustments: These deductions represent adjustments from charges for services rendered to any individual other than employees of the hospital and not otherwise more appropriately categorized, including any patient accounts written off contrary to the hospital's formal policies relative to credit, bad debts and indigency care. [Except in unusual circumstances, the Commissioner will not consider courtesy adjustments as a proper financial element for inclusion in the rate of other patients.

i. The uniform Statewide uncompensated add-on for patients whose bills are paid by a payer which has negotiated a discounted rate of payment shall be based on the full rate of reimbursement rather than on the discounted rate of payment.]

5. (No change.)

6. Medical denials: These deductions represent amounts not due from patients or third party payors because of a ruling by appropriate utilization review or certification processes which determine that the services rendered were not medically appropriate or necessary, but excluding medical denials classified as Nursing Home Placement. [However, once the hospital has begun discharge proceedings against a patient, charges may be made to the patient and not recorded as a medical denial deduction.]

7.-11. (No change.)

(b) (No change.)

8:31B-4.16 Fund accounting

(a)-(b) (No change)

(c) [With the creation of two new restricted funds through these financial elements, funds] **Funds** fall into [six] **four** categories: Unrestricted Funds, [Restricted Internally Generated Major Movable Equipment Replacement Fund (herein Equipment Fund), Restricted Internally Generated Plant Replacement and Renovation Fund (herein Plant Fund),] Donor Restricted Plant and Equipment Fund, Specific Purpose Funds and Endowment Funds. The accounts within each fund are self-balancing, and each fund constitutes a separate subordinate accounting entity. This subsection outlines the conditions and events which require separate accountability within the established funds.

1. Unrestricted Funds are used to account for all monies not restricted by donors [,] **or** grantors[, or the Commission] in accordance with the rules set forth in this section. Two funds are to be established for unrestricted funds:

i. (No change.)

ii. Board Designated Funds are unrestricted funds which have been designated for specific purposes by the hospitals governing board. The board retains the right to undesignated such funds. [All

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operating margins documented at reconciliation may be added by the hospital's governing board to Board Designated Funds, as well as any unrestricted gifts or unrestricted income from donor restricted funds. The portion of the CFFA Fund Target currently available may be included in Board Designated Funds at the discretion of the hospital's governing board.] The amount of such board designated funds for capital replacement and renovation as well as the sources and applications of all Board Designated Funds shall be reported annually to the Department of Health per N.J.A.C. 8:31B-4.13.

2. Restricted Internally Generated Major Moveable Equipment Replacement Fund[s] ("Equipment Fund") is a fund [restricted by the Commission] to be used to account for the portion of all Net Revenues Related to Patient Care for the leasing, depreciation or replacement of major moveable equipment.

i. [Each fiscal year this fund is to be credited out of Net Revenue Related to Patient Care for the total amount on Preliminary Cost Base related to major moveable equipment financial elements.] Income from the investment on the fund's assets shall also be credited to this fund, net of any income taxes attributable to such income. Investments are to be reported at market value, and unrealized gains and losses are to be reported as income or loss each period.

ii. (No change.)

3.-6. (No change.)

[7. Unrestricted Cash and Investments available as Opening Portion of CFFA Fund Target:

i. the portion of the CFFA Fund Target which is available from hospital's unrestricted cash and investments on hand as of the date of the hospital's first schedule of rates shall be determined by each hospital's governing board and reported in N.J.A.C. 8:31B-4 annually per Part VI.

ii. Hospitals shall also report per N.J.A.C. 8:31B-4, Part VI, a formulistic apportionment of available funds to:

(1) Minimum working cash;

(2) Philanthropic and non-operating funds;

(3) Initial major moveable equipment needs; and

(4) Portion of the fund target which is currently available.

iii. First, the Operating Fund minimum working cash is determined pursuant to the determination of working cash per N.J.A.C. 8:31B-3.28.

iv. Next, all unrestricted cash and investments remaining after the calculation of minimum working cash will be deemed historically to have been derived from two sources:

(1) Philanthropy (and other non-operating sources): Defined as non-operating income net of non-operating expenses;

(2) Operations: Defined as operating income plus depreciation and amortization minus long-term debt principal payments minus capital expenditures made from unrestricted funds.

v. The formulistic apportionment of the available cash and investments will be established by examining the financial statements and historical records of the hospital back to a point in time to account for the total available cash and investments not already assigned, pursuant to N.J.A.C. 8:31A-5.5. To the extent that records are insufficient to make this determination, all sources of unrestricted cash and investments will be assumed to have been from operations.

vi. All cash and investments attributable to philanthropy will not be considered further. Cash and investments attributable to operations will then be apportioned between initial major moveable equipment needs and the portion of the CFFA Fund Target which is assumed to be currently available to the hospital.

vii. First, available amounts deemed to be provided from operations will be assigned to initial Major Moveable Equipment needs. Up to one-half of the prospective year's depreciation and price level premium for Major Moveable Equipment will be made available for the Equipment Fund. Any remaining cash and investments are assumed to be available to the hospitals primarily from prior year's unspent depreciation and are assumed by this formula to be available for use as a portion of the Capital Facilities Formula Allowance Fund Target. The Fund Target to be provided in prospective rates from payors, however, will be reduced by the amount determined by each hospital's governing board. Designation, source, and use (for other purpose including operations) of funds assumed to be available for the CFFA Fund Target shall be reported to the Commission in a format to be specified by the Commissioner such that the effect of any use of these funds on the sufficiency of the hospital's Schedule of Rates may be evaluated by the Commission.]

[1. American Hospital Association, Financial Requirements of Health Care Institutions and Services.

2. Although Chapter 83, P.L. 1978 refers to "donor or board restricted funds" (Section 18), the Hospital Audit Guide notes that the term "restricted" should not be used in connection with board or other internal hospital appropriations or designation of funds." Page 8. The Hospital Audit Guide is available from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, NY 10036.

3. For Profit hospitals shall not be required to fund depreciation payments for Major Moveable Equipment.]

8:31B-4.21 Accounting for capital facilities cost

(a)-(g) (No change.)

(h) Any changes in debt financing shall be reported to the Commissioner as they occur.

8:31B-4.24 Self insurance

(a) (No change.)

(b) It is required that where self-insurance for other than those items listed above is elected to be used by a facility, the method should conform with the following:

1. Self-Insurance Fund: The hospital or pool established a fund with a recognized independent fiduciary such as a bank or a trust company. The hospital or pool and fiduciary enter into a written agreement which includes all of the following elements:

i.-ii. (No change.)

iii. Payments by Fiduciary: The agreement must provide that withdrawals must be for malpractice and comprehensive general patient liability losses only and those expenses listed in [(d)] **(b)4** below. Any rebates, dividends, etc., to the hospital from the fund will be used to reduce allowable cost. [Furthermore, evidence of a practice of payments from the fund for purposes unrelated to the proper administration of the fund may result in a withdrawal of recognition of the self-insurance fund. In such instances, payments into the fund will not be considered an allowable cost.]

iv.-v. (No change.)

2.-4. (No change.)

8:31B-4.25 Related organizations

(a) Auxiliaries, guilds, fund raising groups and other related organizations frequently assist hospitals. Such organizations are independent if they are so characterized by their own charter, by-laws, tax-exempt status and governing board or a sufficient combination of these characteristics to demonstrate their independent existence from the hospital. The financial reporting of these organizations should be separate from or combined with reports of the hospitals in accordance with the AICPA's [new statement of position 81-2 "reporting practices concerning hospital-related organizations" (August 1, 1981.).[1]] **Hospital Audit Guide, as amended and supplemented, available from the AICPA Order Department, P.O. Box 2209, Jersey City, N.J. 07303.**

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

(d) At the [Commission's] **Department's** request relevant information reported to the [Commission] **Department** may include:

1.-5. (No change.)

8:31B-4.31 Financial elements generally

[(a)] The financial elements [of the preliminary cost base and of the certified revenue base] shall include the [reasonable] cost of the following, as defined in regulations proposed by the Commissioner and approved by the board: direct patient care principal and interest payments; paid taxes, excluding income taxes; education, research and training programs, not otherwise paid for by the State; the provision of health care services to individuals unable to pay them for reasons of indigency; bad debts, provided adequate recovery

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procedures are followed; preservation, replacement and improvement of facility and equipment subject to appropriate planning requirements; reasonable working capital ... and where applicable and appropriate, reasonable return on investment where a hospital is operating efficiently and effectively.

[(b) Definitions of the financial elements are given in this part.]

8:31B-4.32 Services related to patient care

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

(d) [All costs of services and supplies purchased from a vendor shall be subject to review for reasonableness by the Department of Health and must be approved by the Hospital Rate Setting Commission.] The [Commission] **Commissioner** shall [have the right to disapprove] **issue a public report on** reimbursement for services purchased from vendors that are in violation of State [or Federal] certificate of need regulation.

8:31B-4.33 Direct patient care

Direct Patient Care is the provision by a hospital of medically necessary and appropriate health care services [as defined in Chapter 83, P.L. 1978 section 1b].

8:31B-4.34 Paid taxes

Taxes are monies paid to a governmental unit for conducting business related to direct patient care within its jurisdiction. [Taxes are a financial element of the Preliminary Cost Base or Certified Revenue Base except for Federal, State, or local income, excess profit, or franchise taxes, taxes on property not used for direct patient care, and interest and/or penalties paid thereon.] Taxes related to financing of operations through the issuance of bonds, property transfers, issuance or transfers of stocks, and the like, are not classified as taxes; rather, they are to be amortized or depreciated with the cost of the security or asset. Sales and real estate taxes paid by a hospital in the provision of Services Related to Patient Care are to be included as Paid Taxes. All sales and real estate taxes for Services Related to Patient Care are to be reported in the General Administrative Services cost center and also reported separately from other classification of expense. Employment related taxes, such as FICA, Unemployment Compensation, and Worker's Compensation, are to be classified as employee fringe benefits for all employees, including hospital based physicians. Monies received by a hospital which chooses to self-insure in lieu of payments of Unemployment Compensation taxes and the associated administrative costs of such a self insurance program are included as financial elements and classified as employee fringe benefits, if such monies are reasonably related to the hospital's unemployment compensation experience.

8:31B-4.54 Employee Fringe Benefits

Employee Fringe Benefits are amounts paid to or on behalf of, an employee, in addition to direct salary or wages, and from which the employee or his beneficiary derives a personal benefit before or after the employee's retirement or death. Fringe Benefits associated with physicians are to be reported with physician's compensation. Pensions, annuities and deferred income arrangement costs for past and current services are to be accounted for and reported in accordance with Employee Retirement Insurance and Security Act (ERISA) and Internal Revenue Service (IRS) requirements. Employee Fringe Benefits include FICA, State and Federal unemployment insurance, disability insurance, life insurance, employee health insurance, retirement (net of actuarial and realized gains on the investment of related funds), worker's compensation insurance, other payroll related employee benefits, tuition reimbursement and other training, moving expenses of new employees of a non-recurring nature, the cost of providing free or subsidized meals or cost to the employee at less than charges to employees, employee parking lot costs net of any revenue received for operation of facility, and other non-payroll employee benefits. The cost of providing health care services to employees is included in classifications of expense in various cost centers providing the funds. [Such costs will be factored into the Preliminary Cost Base and Schedule of Rates by certain revenue adjustments.] Where a hospital elects to self-insure for worker's compensation or unemployment insurance, costs reported should be the amounts set aside for that accounting period plus associated administrative costs, where a separate fund has been established, to the actual amounts of claims paid during the accounting year if a fund is not established. (See N.J.A.C. 8:31B-4.24.) Where a hospital provides free or subsidized health care services to employees or physicians, the hospital's customary charges should be generated and accounted for separately as personnel health allowances. (See N.J.A.C. 8:31B-4.15.) In order to preserve comparability of hospital expenses for provision of direct patient care, purchased employee health insurance expenses are reported as a separate cost center and not distributed to the labor costs of each center. Employee Fringe Benefits are assigned to the cost center in which the employee's compensation is reported on the following bases per N.J.A.C. 8:31B-4.131.

Benefit	Basis of Assignment
FICA-non-physician physician	Direct Cost
All other Payroll Related Benefits including Unemployment Insurance, Disability Insurance, Worker's Compensation and Pension and Retirement	Salaries
Life Insurance	Salaries or FTEs
Employee Education and Training	FTEs
Room and Board	FTEs
Cafeteria	FTEs
Parking Lot	FTEs

8:31B-4.59 Major Moveable Equipment

Major Moveable Equipment, as defined in N.J.A.C. 8:31B-4.21 are expenses to be included in the costs of each center at historical depreciation costs (or both owned and capitalized leased equipment) [plus a price level replacement cost premium, as discussed in N.J.A.C. 8:31B-4.42] and operating lease expenses. Interest expense incurred through purchase or capitalized leases of Major Moveable Equipment is not included with Major Moveable Equipment costs and is reported per N.J.A.C. 8:31B-4.66(e) [since the use of price level depreciation of such equipment for the financial elements is intended to replace this financial requirement of hospitals and provide adequate funds to replace equipment at the expiration of useful life].

8:31B-4.61 Reports of costs and revenues

(a) [The financial elements ... shall take into account a facility's income from all sources, including specific purpose grants and other funds from governmental sources, but excluding income and principal from board or donor restricted funds, gifts and special fund raising projects." (Chapter 83, P.L., 1978 section 10-d.)] Expenses incurred and revenues generated by a hospital for items not included in the definitions of Services Related to Patient Care (i.e., Routine Services. Ambulatory Services, Ancillary Services, Patient Care General Services, and Institutional Services) are classified as either other operating expenses and revenues (determined per N.J.A.C. 8:31B-4.131) or non-operating revenue and are to be accounted for separately to determine if and how they will be applied to Costs Related to Patient Care and the Capital Facilities Allowance to determine the hospital total financial elements or the Current Cost Base. There are three cases into which [such reconciliations are] **income is** classified:

1. Case A—Expenses and revenues related to activities which the hospital has selected to engage in but which are not an integral part of, or necessary for, the provision of patient care. Such expenses and revenues are netted against each other. [Gains are applied as reductions to the Current Cost Base used to determine hospital payment rates, but any losses are not applied.]

2. Case B—Expenses and revenues related to activities which the hospital has elected to engage in and which are an integral part of, or necessary for, the provision of patient care. Such expenses and

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revenues are netted against each other. [Losses are applied as increases to the Current Cost Base and gains are applied as reductions.]

3. Case C—Expenses and revenues related to activities which are specifically included under [the S.446 legislation] **N.J.A.C. 8:31B-4.62 through 4.66**. Expenses and revenues are not netted against each other. [Neither gains nor losses are applied in determination of the Current Cost Base.]

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

[(d) Expenses and revenues of these items are netted against each other and the resulting total gains subtracted from or total losses added to Costs Related to Patient Care and the Capital Facilities Allowance to determine the hospital's Current Cost Base, depending on the Case (A, B, or C) into which the item is classified in N.J.A.C. 8:31B-4.62-4.67. Items not listed in N.J.A.C. 8:31B-4.62-4.67, shall be assigned to the case whose definition in N.J.A.C. 8:31B-4.61(c) best matches the nature of the item.]

8:31B-4.62 Excluded Health Care Services

(a) Non-Acute Care Services provided by a hospital such as skilled nursing facilities (approved or unapproved); intermediate care facilities, residential care, long term psychiatric care, long term rehabilitation and intermediate care services are not properly acute hospital functions, and hence are excluded and treated as Case C. Sufficient accounting records should be maintained to account for the costs of such operations (i.e., Medicare cost funding SSA-2552 or SSA-2551) and such costs should be excluded from Costs Related to Patient Care by cost center per N.J.A.C. 8:31B-3.19(c) and 3.24.

[1. However, the following provisions shall apply to certain hospital operated long-term care facilities, in order to promote the objective of the State Health Plan, State Medical Facilities Plan, and Long Term Care Policy Manual (12 N.J.R. 579(b)). The units to which these provisions shall apply must:

i. Be hospital owned and operated;

ii. Be licensed by the department for long-term care;

iii. Have current Medicaid provider agreements;

iv. Have been created, subsequent to January 1, 1980, by the conversion, in an individual institution or at the systems wide level, or at least one licensed acute care hospital bed for each long-term care bed so created, under an approved Certificate of Need; and

v. Have entailed Capital Costs for conversion less than or equal to currently prevailing costs for new construction of freestanding facilities in comparable areas.

2. For hospital-based facilities that meet these requirements, costs shall be accounted for as follows:

i. The proportion of the hospital's Current Cost Base costs for the Cost Centers Administration and General, Education and Research, Fiscal Utilities, Malpractice, Other General Services, Patient Care Coordination, Maintenance, Physicians and Residents which would be deemed reasonable under the reimbursement methodology employed by the New Jersey State Medical Assistance Program in conformance with 42 CFR 447.273 shall be considered, as Case C (neither gains or losses accounted for). The balance of costs in those cost centers shall remain within the Current Cost Base. All costs associated with such units in all other Cost Centers shall be treated as Case C.

ii. For purposes of determining the Capital Facility Formula Allowance (see N.J.A.C. 8:31B-4.41 through 4.45) for hospitals operating such long-term care facilities, the construction costs employed under N.J.A.C. 8:31B-3.20 for long-term care beds shall be the average construction cost of long-term care beds, adjusted for location, published quarterly by the Department. That proportion of the hospital's entire Capital Facility Allowance (including both Capital Cash Requirements and Capital Facility Formula Allowance), which would be deemed reasonable under the reimbursement methodology employed by the New Jersey State Medical Assistance Program in conformance with 42 C.F.R. 447.273 shall be considered as Case C. The balance of the Capital Facility Allowance shall be included in the Preliminary Cost Base.]

(b)-(e) (No change.)

(f) Excluded Ambulatory Services: Outpatient Renal and Home Dialysis. The cost and revenue related to these services are to be treated as Case C[, revenues and expenses are netted, and neither gains nor losses are added to the Preliminary Cost Base]. Sufficient accounting records should be maintained to account for the costs of such operations (that is, Medicare cost report HCFA-2552) and such direct and indirect costs shall be excluded from Costs Related to Patient Care.

(g) Excluded Ambulatory Services: HealthStart Maternal Care Health Support Services. The revenues and expenses associated with the provision of these services shall be treated as Case C, netted against each other[, with neither gains nor losses added to the Preliminary Cost Base].

(h) Excluded Ambulatory Services: HealthStart Pediatric Continuity of Care. In Hospitals with salaried pediatricians, revenues and expenses associated with the non-institutional Medicaid capitated fee shall be treated as Case C and netted against each other. [Gains and Losses shall be excluded from the Preliminary Cost Base.]

(i) Mobile Intensive Care Unit (MICU) Services provided after November 1, 1987: The cost and revenue related to these services are to be treated as Case C, revenues and expenses are netted[, and neither gains nor losses are added to the Preliminary Cost Base]. Sufficient accounting records should be maintained to account for the costs of such operations (that is, Medicare cost report HCFA-2552) and such direct and indirect cost shall be excluded from Costs Related to Patient Care.

[1. Pursuant to P.L. 1989, c.1, section 19, charity care related to MICU services will be reimbursed through the New Jersey Uncompensated Care Trust Fund for all hospitals providing MICU services except University of Medicine and Dentistry of New Jersey University Hospital. Charity care for University Hospital shall be paid through its own hospital's reimbursement rates as established by the Hospital Rate Setting Commission.]

8:31B-4.64 Sales and services not related to patient care

(a)-(e) (No change.)

(f) Gift and Coffee Shops revenue and expense (including sales tax expense) as well as other activities which may be supported by volunteers are excluded from Services Related to Patient Care **(Case C)**. [Net gains from the operation of gift and coffee shops operated by volunteers are not offset against Costs Related to Patient Care (Case C).]

(g) (No change.)

(h) Parking lot or parking garage expenses and revenues at the site of the hospital are to be netted and the remainder apportioned between employees and others per N.J.A.C. 8:31B-4.131. The provision of parking facilities to:

1.-2. (No change.)

3. Others are included (Case B) if the hospital's charge for parking is not substantially inconsistent with other parking facilities in the community where the hospital is located. [If the Commission determines that the hospital's parking charges are not competitive with other parking facilities, the provision of parking to others will be treated as Case C.]

i. (No change.)

8:31B-4.65 Patient convenience items

(a)-(e) (No change.)

(f) Private Room Differential Income above a hospital's most common charge for a semi-private room for similar routine services, when specifically requested by the patient is excluded and treated as Case C. Where ordered by the attending physician for medical necessity, income is excluded and treated as Case C. Hospitals should maintain separate revenue classifications for medically necessary and patient convenience private room revenue. [Patients admitted or transferred to private rooms because of the unavailability of semi-private to private rooms because of the unavailability of semi-private should be charged at the semi-private room rate, with a courtesy allowance (Policy Discount) generated for the differential (see N.J.A.C. 8:31B-4.15). No attempt need to be made to identify private room Routine Service cost differentials.]

8:31B-4.66 Administrative items

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

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[(d) Non-Capital Interest Expenses (interest other than interest or Capital Facilities or Major Moveable Equipment) is excluded from Costs Related to Patient Care since short-term borrowing, etc. is addressed through the Financial Element Working Capital Requirements (see N.J.A.C. 8:31B-4.46 (Case C).

(e) Interest Expense for Major Moveable Equipment is excluded from Costs Related to Patient Care and treated as Case C unless approved as part of a full rate review.]

[(f)]**(d)** Gains on pension reversions are included as Services Related to Patient Care and, as such, shall be treated as Case B and offset against Costs Related to Patient Care[, except in the case of restricted gains used to offset future pension costs in excess of the pension economic proxy].

8:31B-4.67 Non-operating revenues (net of expenses)

(a)-(i) (No change.)

(j) Interest income from financial charges on delinquent accounts receivable shall not be included in Costs Related to Patient Care. [One-half, net of one-half of transaction costs,] **Income** shall be treated as a Case C item[, and one half, net of one-half of transaction costs, shall be offset against Outside Collection Costs. Transaction costs in excess of interest income shall not be added to Outside Collection Costs].

8:31B-4.72 Medical-Surgical Acute Care Units (MSA)

(a) Function:

1. (No change.)

2. [Revenue] **All revenue** generated from charge differentials between private and semi-private rooms (except those assigned for medical necessity) is to be reported here, and also as a reconciliation per instructions in N.J.A.C. 8:31B-4, Part IV. Medical and Surgical Supplies should be reported in accordance with N.J.A.C. 8:31B-4.55.

3. (No change.)

(b) (No change.)

8:31B-4.76 Burn Care Unit (BCU/**ICU**)

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

8:31B-4.77 Intensive Care Units (ICU/**BCU**)

(a) Function:

1. Intensive Care Units provide nursing care to patients who, because of surgery, shock, trauma, serious injury or life threatening conditions, require intensified comprehensive observation and care. These units are staffed with specially trained nursing personnel and contain specialized equipment for patient monitoring and life support systems. Intensive Care Units include Stroke Care, Pediatric, Intensive Care, Burn Care [(not classified in BCU),] **Unit (BCU),** Medical and Surgical Intensive Care and mixed Intensive Care-Coronary Care Units, but exclude units solely designated 25 Coronary Care Units or Neo-Natal Intensive Care Units[,]. Medical and Surgical Supplies should be reported in accordance with N.J.A.C. 8:31B-4.55.

2. (No change.)

(b) (No change.)

8:31B-4.98 Physical Therapy (PHT)

(a) Function:

1. Physical Therapy is a service employing therapeutic exercise and massage, and utilizing effective properties of light, heat, cold, water, and electricity in diagnosis and rehabilitation of patients with neuromuscular, orthopedic, and other disabilities under the medical direction of a physiatrist or other qualified physician. Physical Therapy services include the provision of clinical and constructive services and the direction of patients in the use, function, and care of braces, artificial limbs, and other devices. This center [incudes] **includes** the cost of physical therapy related medical supplies, materials and equipment not requisitioned from Central Supply Services and for which a separate charge is not made to a patient.

2.-3. (No change.)

(b) (No change.)

8:31B-4.131 Financial Elements Report

[(a)] The Commissioner of Health shall [propose] **approve** Financial Elements Report forms [("Chapter 83")] and reporting instructions consistent with the [first] five [Sections] **Parts** of the Financial Elements and Reporting Regulations for completion by all New Jersey hospitals [(see Appendix 1)]. **The Commissioner may refine these report forms for research purposes by adding, modifying, or changing cost centers.**

(a)

HOSPITAL REIMBURSEMENT

Appropriate Collection Procedures; the Set-Off of Individual Liability Program; Uncompensated Care; Uncompensated Care Trust Fund; Determination of Uncompensated Care Payments; Demographic Information

Proposed Amendment: N.J.A.C. 8:31B-4.38

Proposed Repeals: N.J.A.C. 8:31B-3.41 and 4.39, and 8:31B-7

Proposed Repeal and New Rule: N.J.A.C. 8:31B-4.40

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: P.L. 1991, c.187 and N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1993-380.

Submit comments by August 18, 1993 to:
Health Care for the Uninsured Program
New Jersey Department of Health, Room 403
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Health is proposing to make several changes to N.J.A.C. 8:31B as a result of the passage of P.L. 1992, c.160. Chapter 160 repealed the Uncompensated Care Trust Fund, and modified requirements relating to the collection of data on unpaid hospital bills.

The Department proposes to amend N.J.A.C. 8:31B-4.38, Uncompensated Care, which defined the services which are eligible for reimbursement for uncompensated care under the Health Care Trust Fund. The proposed amendments will define the services for which hospitals will be paid for charity care under the Health Care Subsidy Fund established by P.L. 1992, c.160. Since the Fund does not provide a subsidy for bad debt, the proposed amendment deletes all reference to bad debt.

The Department is proposing to repeal N.J.A.C. 8:31B-3.41, which deals with uncompensated care, and N.J.A.C. 8:31B-4.39, which describes the methodology of uncompensated care payments under the Health Care Trust Fund. Subchapter 7, which discusses the requirements of hospitals under the Health Care Trust Fund, is also proposed for repeal. These sections are no longer valid, since chapter 160 repealed the Health Care Trust Fund mechanism.

In order to receive reimbursement for bad debt under P.L. 1991, c.187, hospitals were required to follow in-house collection rules, in accordance with N.J.A.C. 8:31B-4.40. Since New Jersey acute care hospitals are no longer reimbursed for bad debt, these collection requirements are ineffective. Therefore the Department proposes to repeal N.J.A.C. 8:31B-4.40.

Under the Health Care Facilities Planning Act, hospitals are required to submit reports and information requested by the Commission for the purpose of administering the State's policy with respect to hospital services, facility efficiency, and cost containment. Under the Health Care Reform Act of 1992, acute care hospitals in New Jersey are specifically required to collect demographic information on all charity care patients, and submit this information to the Department of Health. Consequently, the Department proposes a new rule, N.J.A.C. 8:31B-4.40, to require the submission of data on both charity care patients and those written off to bad debt.

Specifically, the requirements include collection of demographic data on patients written-off to bad debt; hospital identifiers; specific information on charges for each case; diagnosis information; specific information

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on patient eligibility level; variables which will allow aggregate data analysis by area (zip code); and a hospital-specific patient identifier (medical record number).

Having data available on hospitals' experience with charity care and bad debt is useful for several reasons: first, the data will increase understanding of the issues surrounding uncompensated care; second, the data will allow the Legislature, Department, and the Essential Health Services Commission (established by P.L. 1992, c.160) to assess the impact of deregulation on hospitals' provision of uncompensated services. Continuation of the data base on uncompensated care will allow for study of current health care initiatives, and will aid in the determination of which, if any, new initiatives are needed.

Social Impact

The proposed amendment to N.J.A.C. 8:31B-4.38 should not have a significant social impact. The same services which were covered for charity care under P.L. 1992, c.187, are identical to those proposed in this amendment.

The proposed deletion of N.J.A.C. 8:31B-7 and 4.39 is not expected to have any significant social impact, as this deletion simply conforms to the legislation, P.L. 1992, c.160, which repealed the Health Care Trust Fund.

With the repeal of N.J.A.C. 8:31B-4.40, hospitals will be able to adopt more aggressive collection practices. This may result in patients being subject to a quicker onset of aggressive collection measures, and tangible impacts on patients' financial situations. This may lead to public relations problems for hospitals and the Department.

The proposed new rule for charity care and bad debt demographics, N.J.A.C. 8:31B-4.40, will add more information to the available data on uncompensated care. This will allow for an increased understanding of the uninsured in New Jersey, as well as a vehicle to measure the impact of deregulation on the provision of charity care Program, and bad debt on hospitals and patients.

Economic Impact

Since hospitals are no longer reimbursed for bad debt, there will be more incentive for them to pursue patients for collection of outstanding debts. The deletion of collection rules will allow hospitals to pursue bad debts using all available measures. This may help hospitals to collect bad debt with more efficiency, which may result in less bad debt. This proposed deletion of the collection rules may add financial pressure to patients who are unable to pay their bills.

The proposed deletion of N.J.A.C. 8:31B-7 and 4.39 should not have an economic impact. The Health Care Trust Fund was repealed by P.L. 1992, c.187. This proposal will repeal the methodology of Trust Fund payments to the hospitals.

The proposed amendment to N.J.A.C. 8:31B-4.38 may have no economic impact. Services covered under the Charity Care Program remain the same as in the previous rules which covered charity care services.

The proposed new rule at N.J.A.C. 8:31B-4.40 will have a minor economic impact on New Jersey hospitals. Hospitals currently submit quarterly data on patients written off to bad debt. These requirements have become standard computer programs for hospitals, and, with minor modifications, hospitals will be able to submit the same variables on patients screened for charity care. Under P.L. 1992, c.187, hospitals have been required to screen patients for charity care eligibility. Therefore, most of the requested data elements are currently collected in the process of the screening. The new variables required for the charity care data may increase hospitals' costs for computer programming and staff time.

Regulatory Flexibility Statement

The proposed amendment and new rule in the hospital licensing standards would not affect small business, as the term is defined in the Regulatory Flexibility Act, 52:14B-16 et seq. The hospitals in New Jesey which are regulated by N.J.A.C. 8:43G and N.J.A.C. 8:31B all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 8:31B-3.41, 4.39, 4.40 and 8:31B-7.

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

8:31B-4.38 [Uncompensated care] **Charity care and reduced charge charity care**

(a) [Uncompensated] **Charity** care includes only the reasonable cost of the following:

[1. Bad debts for Chapter 83 Services, provided appropriate collection procedures as defined in N.J.A.C. 8:31B-4.40 are followed and the account is at least 120 days old except as provided in N.J.A.C. 8:31B-4.40(e).]

[2.]**1.** Charity care for [Chapter 83 Services] **services,** provided the patient is qualified as eligible pursuant to N.J.A.C. 8:31B-4.37;

[3.]**2.** Advanced life support (ALS) services provided pursuant to P.L. 1984, c.146 (N.J.S.A. 26:2K-7 et seq.) provided the patient is qualified as eligible for charity care pursuant to N.J.A.C. 8:31B-4.37. [The Commission shall establish a schedule of reimbursement rates for advanced life support services. Reimbursement shall exclude bad debts, the difference in a contractual allowance, and any medical denials for advanced life support services. This shall apply to reimbursement for ALS services as of November 1, 1987;]

[4.]**3.** Charity care as defined by following N.J.A.C. 8:31B-4.37 [and bad debts, provided appropriate collection procedures are followed pursuant to N.J.A.C. 8:31B-4.40,] for outpatient dialysis services provided after September 1, 1987 to patients ineligible for Medicare coverage. Reasonable costs shall be limited to the lower of the [hospital's charges] **established Medicaid rate** or the prospectively determined composite rate as established by Medicare. The amount reported by the hospital as [uncompensated] **charity** care shall not include Medicare co-insurance amounts, since Medicare will reimbuse providers for the amount, provided [reasonable collection efforts are pursued, or if] the patient is eligible for charity care pursuant to N.J.A.C. 8:31B-4.37.

(b) [Uncompensated] **Charity** care excludes the cost of the following:

1.-6. (No change.)

7. Cost associated with procuring organs sent to foreign countries; **and**

8. Non-health services provided by a hospital[; and]**.**

[9. Services not paid pursuant to Chapter 83 except as provided in (a)3 and 4 above.]

[(c) Uncompensated care shall be determined prospectively as the cost associated with eligible services provided to persons determined to be eligible for charity care pursuant to N.J.A.C. 8:31B-4.37, net of grants and other funds available for the medically indigent, and for a hospital's Bad Debt Provision provided appropriate collection procedures have been followed.]

8:31B-4.40 Demographic Information

(a) Hospitals which are licensed to provide acute care services shall submit information about all inpatients and all outpatients to the Department of Health.

1. These hospitals shall submit quarterly information to the Department of Health for all patients who have balances which were written off to bad debt (in that quarter) and for all patients who were screened for charity care (in that quarter). This information shall be provided on media specified by the Department.

i. Quarterly periods shall be: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. The first quarter will be from January 1, 1993 through March 31, 1993.

ii. Information will be reported about each patient described in (a)1 above. This information will include: age; sex; marital status; health insurance coverage; health insurance coverage of the parent, spouse or responsible party (when the patient does not have insurance); hospital code number; county in which the hospital is located; employment status code; total charges; Medicaid amount; amount written off; reason for patient's failure to pay; DRG code (for inpatients); outpatient treatment code (mental health, substance abuse, prenatal, AIDS or other); family income amount; family size; family assets amount; patient account number; Zip Code; financial screening status; and subsidy approval percent.

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TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes N.J. 29 in Hunterdon County; N.J. 35 in Ocean County; N.J. 45 in Gloucester County; and N.J. 77 in Cumberland County

Proposed Amendments: N.J.A.C. 16:28A-1.20, 1.25, 1.31 and 1.41

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, 39:4-197.5, 39:4-198 and 39:4-199.

Proposal Number: PRN 1993-384.

Submit comments by August 18, 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 N.J.A.C. 16:28A-1.20 and 1.41 to establish "handicapped parking spaces," on Routes N.J. 29 in the City of Lambertville, Hunterdon County and N.J. 77 in the City of Bridgeton, Cumberland County, respectively; N.J.A.C. 16:28A-1.25 to establish "no stopping or standing" zones along Route N.J. 35 in Berkeley Township, Ocean County; and N.J.A.C. 16:28A-1.31 and 1.41 to establish revised "no parking bus stop" zones along Routes N.J. 45 in the City of Woodbury, Gloucester County and N.J. 77 in the City of Bridgeton, Cumberland County, respectively. The provisions of these amendments will improve the flow of traffic and enhance safety along the highway system.

These amendments are being proposed at the request of the local governments of the City of Lambertville, City of Bridgeton, Berkeley Township, and the City of Woodbury, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of "handicapped parking spaces" along Routes N.J. 29 in the City of Lambertville, Hunterdon County and N.J. 77 in the City of Bridgeton, Cumberland County; "no stopping or standing" zones along Route N.J. 35 in Berkeley Township, Ocean County; and "no parking bus stop" zones along Routes N.J. 45 in the City of Woodbury, Gloucester County and N.J. 77 in the City of Bridgeton, Cumberland County, was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendments will establish parking restrictions along Routes N.J. 29 in the City of Lambertville, Hunterdon County; N.J. 35 in Berkeley Township, Ocean County; N.J. 45 in the City of Woodbury, Gloucester County; and N.J. 77 in the City of Bridgeton, Cumberland County, to improve traffic flow and enhance 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. The local governments will bear the costs for the installation of appropriate parking restriction 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. 52:14B-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-1.20 Route 29

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

(e) The certain part of State highway Route 29 described in this subsection shall be designated and established as a "restricted parking" space, for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in this area. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

1. Restricted parking space zone in Hunterdon County:

i. In the City of Lambertville:

(1) Along the southbound (westerly) side:

(A) Beginning 182 feet south of the southerly curb line of Swan Street and extending 22 feet south therefrom.

16:28A-1.25 Route 35

(a) The certain parts of State highway Route 35 described in this subsection [are] **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. 39:4-198, proper signs shall be erected.**

1.-21. (No change.)

22. No stopping or standing in Berkeley Township, Ocean County:

i. Along the southbound (westerly) side:

(1) Beginning 100 feet north of the northerly curb line of 20th Avenue to the southerly curb line of 24th Avenue.

ii. Along the northbound (easterly) side:

(1) Beginning at the northerly curb line of 24th Avenue to the southerly curb line of 14th Avenue.

(b)-(e) (No change.)

16:28A-1.31 Route 45

(a) (No change.)

(b) The certain parts of State highway Route 45 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.-2. (No change.)

3. Along the northbound (easterly) side **(North Broad Street)** side in the City of Woodbury, Gloucester County:

i. Near side bus stops:

[(1) Barber Avenue—Beginning at the southerly curb line of Barber Avenue and extending 110 feet southerly therefrom.

(2) Newton Avenue—Beginning at the southerly curb line of Newton Avenue and extending 125 feet southerly therefrom.

(3) Watkins Avenue—Beginning at the southerly curb line of the prolongation of Watkins Avenue and extending 120 feet southerly therefrom.

(4) Walnut Street—Beginning at the prolongation of the southerly curb line of Walnut Street and extending 105 feet southerly therefrom.

(5) Aberdeen Place—Beginning at the southerly curb line of Aberdeen Place and extending 105 feet southerly therefrom.

(6) Stuart Street—Beginning at the southerly curb line of Stuart Street and extending 100 feet southerly therefrom.]

(1) Watkins Avenue—Beginning at the prolongation of the southerly curb line of Watkins Avenue and extending 120 feet southerly therefrom.

(2) Walnut Avenue—Beginning at the prolongation of the southerly curb line of Walnut Street and extending 105 feet southerly therefrom.

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(3) Carpenter Street—Beginning at the southerly curb line of Carpenter Street and extending 100 feet southerly therefrom.

(4) Stuart Street—Beginning at the southerly curb line of Stuart Street and extending 100 feet southerly therefrom.

[ii. Mid-Block bus stop:

(1) Barber Avenue—Beginning 50 feet south of the southerly curb line of Barber Avenue and extending 135 southerly therefrom.]

[iii.]**ii.** Far side bus stops:

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

[(3) Hunter Street—Beginning at the northerly curb line of Hunter Street and extending 100 feet northerly therefrom.

(4) Courtland Street—Beginning at the northerly curb line of Courtland Street and extending 100 feet northerly therefrom.

(5) Railroad Avenue—Beginning at the northerly curb line of Railroad Avenue and extending 100 feet northerly therefrom.]

4. Along the southbound [on the] (westerly) **(Broad Street)** side in the City of Woodbury, Gloucester County:

i. Far side bus stops:

[(1) West Red Bank Avenue—Beginning at the southerly curb line of West Red Bank Avenue and extending 100 feet southerly therefrom.]

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

ii. Near side bus stops:

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

[(5) West Street—Beginning at the northerly curb line of West Street and extending 125 feet northerly therefrom.]

[(6)]**(5)** (No change in text.)

iii. (No change.)

5.-9. (No change.)

(c) (No change.)

16:28A-1.41 Route 77

(a) (No change.)

(b) The certain parts of State highway Route 77 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. In the City of Bridgeton, Cumberland County:

i. Along the southbound (westerly) side:

(1) Far side bus stops:

(A) Washington [Avenue] **Street**—Beginning at the southerly curb line of Washington [Avenue] **Street** and extending [105] **108.57** feet southerly therefrom.

(B)-(C) (No change.)

(d) **East** Commerce Street—Beginning at the southerly curb line of **East** Commerce Street and extending [105] **142.95** feet southerly therefrom.

(2) (No change.)

ii. Along the northbound (easterly) side:

(1) Far side bus stops:

(A) **East** Commerce Street—Beginning at the northerly curb line of **East** Commerce Street and extending [105] **100** feet northerly therefrom.

(B) Washington Street—Beginning at the northerly curb line of Washington Street and extending [105] **100** feet northerly therefrom.

(C)-(E) (No change.)

(2) (No change.)

2.-4. (No change.)

(c) (No change.)

(d) The certain parts of State highway Route 77 described in this subsection shall be designated and established as restricted parking space, for use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking spaces[.]**:**

1. Restricted parking in the City of Bridgeton, Cumberland County:

[i. Along the northbound (easterly) side:

(1) Beginning 84 feet from the northerly prolongation of Rose Street and extending 22 feet northerly therefrom.

(2) Beginning 198 feet from the northerly curb-line of Myrtle Street and extending 22 feet northerly therefrom.

ii. Along southbound (westerly) side:

(1) Beginning 428 feet from the northerly curb-line of Myrtle Street and extending 22 feet northerly therefrom.]

i. Along the southerly side:

(1) 223 Pearl Street—Beginning 84 feet north of the prolongation of the northerly curb line of Rose Street and extending 22 feet northerly therefrom.

ii. Along the southbound (westerly) side:

(1) 282 Pearl Street—Beginning 384 feet south of the prolongation of the southerly curb line of Orchard Street and extending 22 feet south therefrom.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Mid-Block Crosswalk

Route N.J. 27 in Middlesex and Somerset Counties

Proposed New Rule: N.J.A.C. 16:30-10.15

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-34.

Proposal Number: PRN 1993-375.

Submit comments by August 18, 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 proposed new rule will establish a "mid-block crosswalk" along Route N.J. 27 in Franklin Township, Somerset County and North Brunswick Township, Middlesex County for the efficient flow of traffic, the enhancement of safety, the well-being of the populace and to provide a designated area for persons to legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device.

As part of a review of current conditions, and upon request from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of the "mid-block crosswalk" along Route N.J. 27 in Franklin Township, Somerset County and North Brunswick Township, Middlesex County was warranted.

The Department therefore proposes new rule N.J.A.C. 16:30-10.15 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed new rule will establish a "mid-block crosswalk" along Route N.J. 27 in Franklin Township, Somerset County and North Brunswick Township, Middlesex County to provide a designated area for persons to legally cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public and ensure pedestrian safety.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the appropriate striping and installation of "mid-block crosswalk" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size,

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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 new rule does 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. 52:14B-16 et seq. The proposed new rule primarily affects the motoring public, pedestrians, and the governmental entities responsible for the enforcement of the rules.

Full text of the new rule follows:

16:30-10.15 Route 27

(a) The certain parts of State highway Route 27 described in this subsection shall be designated and established as a mid-block crosswalk:

1. In Franklin Township, Somerset County and in North Brunswick Township, Middlesex County:

i. From a point 290 feet south of the southerly curb line of Schmidt Lane to a point six feet southerly therefrom.

(a)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING
BUREAU OF AUTHORITY COORDINATION AND LOCAL TRANSPORTATION PLANNING

State Highway Access Management Code Definitions; Applications for Staged Development; Permit Process; Type of Permit and Review Determination, Access Permit Applications; Permits and Permit Fees; Major Access Permits with Planning Review Process; Appeal Process; Department Initiated Projects and Permits; Waivers

Proposed Amendments: N.J.A.C. 16:47-1.1, 4.1, 4.3 thru 4.6, 4.13, 4.32, 4.35 and Appendix B

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1 and State Highway Access Management Act, P.L. 1989, c.32.

Proposal Number: PRN 1993-376.

Submit comments by August 18, 1993 to:

Charles Meyers
Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Effective April 20, 1992, the New Jersey Department of Transportation adopted new rules at N.J.A.C. 16:47, to implement the provision of the State Highway Access Management Act, P.L. 1989, c.32 (N.J.S.A. 27:7-91) (see 23 N.J.R. 1525(a) and 24 N.J.R. 1518(b)). Since the rules were adopted the Department has conducted numerous training sessions for Department personnel to ensure that the Access Code could be implemented in a clear, fair and consistent manner. Additionally, feedback from developers, the general public and constant review by the Bureaus of Major Access Permit and Authority Coordination and Local Transportation Planning has resulted in amendments proposed and adopted at 25 N.J.R. 903(a) and 1990(a), respectively, and administrative changes effected at 25 N.J.R. 1005(b), bringing the Code into conformity with current practices.

The proposed amendments, in addition to clarifying requirements, effect some administrative, non-substantive and technical changes.

In order of citation, the changes are as follows:

The definition of "design review" is being deleted because all major applications will be reviewed by the Bureau of Major Access Permits. The definitions of application types are being clarified to indicate that only vehicular traffic directly accessing the State highway is used to determine the type of application. "Design standards" is being amended to include the "Fourth Edition, Traffic Engineering Handbook" or superseding edition. The addition of a definition of "lot consolidation or subdivision applications (or permits)" is needed to correct an oversight by the Department; although the fees, timeframes, process, and checklist associated with this type of application (or permit) is already contained in N.J.A.C. 16:47-4.5, 4.6, 4.40 and 4.41. The purpose of allowing this type of permit is to facilitate the Department's administration of the Access Code and ensure compliance with provisions of N.J.S.A. 27:7-93. Developers and applicants are encouraged to use this process prior to seeking municipal approvals to ensure that general access questions are answered and consistent with the above section of the law and provisions of N.J.A.C. 16:47-3.16(a).

The text in N.J.A.C. 16:47-4.1 is being amended to become consistent with references to stages of development elsewhere in the rules.

The text in N.J.A.C. 16:47-4.3 is being amended to indicate that an applicant may submit a power of attorney form with an application; to include organizational changes; to broaden who may submit a street intersection application; and to clarify the Department's regulation of traffic directly accessing a State highway.

N.J.A.C. 16:47-4.4 is being clarified to address the Department's focus on traffic directly accessing a State highway and to provide notice that the applicant and Department are encouraged to discuss traffic distribution when there will be alternative access.

N.J.A.C. 16:47-4.5 is being revised to correct the form numbers and the Lot Consolidation or Subdivision application title.

N.J.A.C. 16:47-4.13 is being revised to delete paragraph (o) because this is covered at N.J.S.A. 27:7-92 and N.J.A.C. 16:47-1.1, definitions of "lot," "permittee," and "significant increase in traffic," and N.J.A.C. 16:47-4.19, Street intersections.

N.J.A.C. 16:47-4.32 is being revised because the Regional Director Maintenance position has been eliminated. The amended section explains when the Executive Director for Regional Operations, Regional Design Engineer, and the Manager of the Bureau of Major Access Permits will fulfill these duties.

N.J.A.C. 16:47-4.35 is being expanded to include the availability and requirement to use the waiver form. The Department form was printed after the adoption of the rules.

In Appendix B, segments of Routes 20, 21, 40, and 208 are being corrected to designate the appropriate access level 3 in urban areas and access level 2 for rural areas.

The clarifications will enhance the public's understanding of the rules.

Social Impact

The proposed amendments as delineated in the Summary above will effectuate technical and non-substantive changes to the Access Code providing clarity in language, and bringing the Code into conformity with current practices. These changes will not result in a significant social impact on the public, but will make the Access Code easier to use, thus providing a benefit to the regulated public who is anyone seeking access to his or her property to highways under the jurisdiction of the New Jersey Department of Transportation.

Economic Impact

The proposed amendments do not economically impact the general public. There are no increases in permit fees, nor are there substantial changes proposed which would increase the cost for applicants to comply with the Code. Additionally, Access permit applicants will benefit greatly because of the streamlining of the application process and the permit issuance. The costs of these requirements vary with the type of application and cannot be quantified without such information.

Regulatory Flexibility Analysis

The proposed amendments regulate all potential applicants/permittees who seek access to those highways which are under the jurisdiction of the New Jersey Department of Transportation some of whom may be small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Most of the changes as delineated in the Summary and Economic Impact will be beneficial to the regulated public. The amendments do not impose any reporting or recordkeeping requirements on small businesses and clarify other compliance requirements which will not affect them economically. There are no changes anticipated in the costs to the applicant for professional services. The size and nature of the individual application will dictate the costs to the

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applicant, with the larger applications generally bearing the greater cost. The Department does not believe that any additional requirements are needed to address the specific situation of small businesses.

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

16:47-1.1 Definitions

The following words and terms, when used in this Access Code, shall have the following meanings unless the context clearly indicate otherwise:

...

"Applicant time" means a period of time between a Department request for revisions or information and its receipt by the Department. Time during this period is not counted in the Department time frames. Following a determination that an application is incomplete or unacceptable for review by a Regional Maintenance Office[, Major Permit Unit,] or the Bureau of [Access and Development Impact Analysis] **Major Access Permits,** time frames will be reset to the beginning of that step of that unit's review time. The Department will publish a list of steps and the associated time frames for each type of application.

...

"Certificate of acceptance" means a document issued by the [Department] **Bureau of Major Access Permits** to indicate that the permittee for a major permit with a planning review has satisfactorily met the construction conditions of the permit. This certificate is required in advance of using the access and obtaining a certificate of occupancy.

...

["Design review" means the review of major access and concept review applications performed by the Major Permits Unit of the Regional Design Office at the Department.]

"Design standards" means standards for design based on one or more of the following:

1.-14. (No change.)

15. Pline, James L., editor, "Traffic Engineering Handbook, 4th edition," 1992 or superseding edition, available through the Institute of Transportation Engineers, 525 School St., S.W., Suite 410, Washington, D.C. 20024-2729.

...

"Lot consolidation or subdivision applications (or permits)" means applications (or permits) addressing two or more lots to be combined into one lot or one lot to become two or more lots.

...

"Major access applications (or permits)" means access applications (or permits) for lots with an expected two-way traffic volume of 500 or more vehicle trips per day **directly accessing a State highway** to and from the use or uses.

"Major access applications (or permits) with planning review" means access applications (or permits) for lots with an expected two-way traffic volume of 500 or more vehicle trips per day **directly accessing a State highway** and with an expected peak-hour volume of 200 or more vehicle trips **directly accessing a State highway** to and from the use or uses.

...

"Major traffic generator" means the use or uses which generates a total of 500 or more vehicle trips per day **directly accessing a State highway** to and from the use or uses.

...

"Minor access applications (or permits)" means access applications (or permits) for lots with an expected two-way traffic volume of less than 500 vehicle trips per day **directly accessing a State highway** to and from the use or uses.

...

16:47-4.1 Applications for staged development

Applications for staged development will be approved if the access plan at each [phase] **stage** of development satisfies minimum design standards. If the development is staged, the applicant shall indicate the maximum development potential, under zoning, for the undeveloped portion of the lot.

16:47-4.3 Permit process

(a)-(e) (No change.)

(f) Applications pertain to lots, not access points. Applications for driveways can only be signed by the lot owner or a representative holding an appropriate power of attorney. **A completed power of attorney form (MT-156) shall be submitted with the application when the lot owner does not sign the application.** For shared access between lots, at the time of the development application for each lot, an application and separate fee shall be submitted for each lot signed by each lot owner. For easements or access through lots adjacent to the highway, the application shall be signed by the owner of the lot adjacent to the highway.

(g)-(h) (No change.)

(i) Street intersection applications [must] **shall** be submitted **to the Bureau of Major Access Permits** for all lane additions to existing streets, and new streets. Street improvement applications must be submitted for all other proposed changes to existing streets. Applications for new streets and lane additions to existing streets can be signed by an adjacent lot owner or the county or municipal [engineer] **official.** Applications for other changes to existing streets [can only] **shall** be signed by the county or municipal [engineer] **official.**

(j) There are three different categories of access applications. They are shown in N.J.A.C. 16:47-4.4(a) and are based on **the following factors:**

1. Traffic [traffic] generation, as determined by reference to the Institute of Transportation Engineers (ITE) publication entitled "5th Edition, Trip Generation," superseding edition, or superseding rates adopted by the Department. For land uses not listed in these sources or when an applicant believes these rates are not representative, the Department may accept alternative evidence of representative rates[.]; **and**

2. Those vehicle trips which directly access a State highway.

(k)-(r) (No change.)

16:47-4.4 Type of permit and review determination

(a) The Department shall determine the types of applications required. Single-family residential permits, residence and business combined permits, and government driveway permits shall be classified based on the definitions in N.J.A.C. 16:47-1.1. The Department shall be guided by Appendix E and Appendix E1, Access Application Thresholds, incorporated herein by reference, in determining the other types of applications and in determining which Department units will review an application.

1. Any use generating less than 500 vehicle trips per day **directly accessing a State highway** to and from the lot requires a minor application.

2. Any use generating 500 or more vehicle trips **directly accessing a State highway** per day and less than 200 peak-hour vehicle trips to and from the lot requires a major application.

3. Any use generating 500 or more vehicle trips per day and 200 or more peak-hour vehicle trips **directly accessing a State highway** to and from the lot requires a major application with a planning review.

(b) (No change.)

(c) The chart in Appendix E and Appendix E1 should be used only to estimate trip generation and assist in determining the type of application. Applicants should contact the Regional Maintenance Offices or the Bureau of Major Access Permits for assistance on the use of the table. The type of application, any required traffic analysis for potential traffic signals, or traffic impact study shall use the trip generation process derived from the Institute of Transportation Engineers publication entitled "5th Edition Trip Generation Report," or superseding edition including the use of superseded trip generation rates adopted by the Department. **If the lot is to be served by alternative access as well as direct access to a State highway, the applicant is encouraged to discuss the distribution of vehicles between the direct access and alternative access with the Regional Maintenance Office or the Bureau of Major Access Permits.**

(d)-(f) (No change.)

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16:47-4.5 Access permit applications

(a) The maximum time frames for the review of various types of applications are summarized below. They are for the Department only and do not include any applicant time or time for Federal Highway Administration reviews of work on interstate highways, interchanges, or ramps. The Department's check of the completeness of an application is included in these time frames.

DEPARTMENT TIME FOR APPLICATIONS ACCEPTED FOR REVIEW (IN DAYS)[1]

	Form	Minor[2]	Major	Major With Planning Review
. . .				
Street Intersection	MT-[32]**160**	35	100	175
Concept Review[s]	MT-32	NA	100	175
Street Improvement	MT-[120A]**158**	35	NA	NA
Lot [Subdivision or] Consolidation **or Subdivision**	MT-155	NA	50	NA

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

16:47-4.6 Permits and permit fees

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

(g) As a condition of any permit the Department may require a bond or certified check in an amount sufficient to guarantee or insure proper maintenance or restoration of the area disturbed by the [applicant] **permittee**. If it becomes necessary for Department forces or contractors to make repairs, for any reason, the cost of such work shall be borne by the [applicant] **permittee**.

(h)-(n) (No change.)

16:47-4.13 Major access permits with planning review process

(a) Potential applicants shall schedule a pre-application conference with the Bureau of Major Access Permits for major applications [that will be reviewed by the Bureau of Access and Development Impact Analysis] **with a planning review**.

(b)-(n) (No change.)

[(o) Major applications with planning reviews that propose alternative access to a street which intersects a State highway may lead to a significant increase in traffic on the street at its State highway intersection. This could cause the local agency's street intersection permit to expire.]

16:47-4.32 Appeal process

(a) The appeal process for minor permits is as follows:

1. The applicant shall submit a written request for reconsideration to the Regional Maintenance Office within 30 days of a notice of rejection or unacceptable permit conditions. The request shall include reasons for the appeal. Within seven days of receipt, the Regional Maintenance Office shall forward the request to the Regional [Director] **Maintenance Engineer,** with pertinent documents, and advise the applicant of this action.

2. Within 10 days of receipt of the reconsideration request, the Regional [Director] **Maintenance Engineer** will determine whether to grant the reconsideration request. If the request is granted, the Regional [Director] **Maintenance Engineer** will schedule a meeting, within 30 days, with the applicant and provide the applicant with an opportunity to present additional information in support of the application.

3. The Regional [Director] **Maintenance Engineer** shall render a decision in writing within 15 days of the meeting and so notify the applicant. If the Regional [Director] **Maintenance Engineer** denies the applicant's request for reconsideration or if the applicant does not agree with the decision of the Regional [Director] **Maintenance Engineer,** the applicant may submit an appeal to the [Assistant Commissioner, Construction and Maintenance] **Executive Director for Regional Operations** within 15 days.

4. The [Assistant Commissioner, Construction and Maintenance] **Executive Director for Regional Operations** shall schedule an informal hearing within 10 days of his or her receipt of the applicant's appeal. **The Executive Director for Regional Operations may conduct the hearing or designate the Manager of the Bureau of Major Access Permits as the hearing officer.** At the hearing, the applicant will be accorded an opportunity to present further information justifying the acceptance of the access plan.

5. In reaching the final agency decision, the [Assistant Commissioner, Construction and Maintenance,] **Executive Director for Regional Operations** shall consider **the information presented at the hearing and the recommendation of the hearing officer if designated and** the criteria set forth in the Act and these rules, the lot owner's right of reasonable access to the general system of streets and highways in the State and the public's right and interest in a safe and efficient highway system. The [Assistant Commissioner, Construction and Maintenance,] **Executive Director for Regional Operations** shall render the final agency decision, with reasons, within 10 days of the informal hearing and so notify the applicant in writing.

(b) The appeal process for all major permits, concept reviews, and developer agreements shall be as follows:

1. (No change.)

2. Within 10 days of receipt of the reconsideration request, the Manager of the Bureau of Major Access Permits will determine whether to grant the reconsideration request. If the request is granted, the Manager of the Bureau of Major Access Permits will schedule a meeting, within 30 days **of the receipt of the reconsideration request,** with the applicant and provide the applicant with an opportunity to present additional information in support of the application.

3. The Manager of the Bureau of Major Access Permits shall render a decision in writing within 15 days of the meeting and so notify the applicant. If the Manager of the Bureau of Major Access Permits denies the applicant's request for reconsideration or if the applicant does not agree with the decision of the Manager of the Bureau of Major Access Permits, the applicant may submit an appeal to the [Assistant Commissioner, Design and Right-of-Way] **Director, Division of Regional Design**, within 15 days.

4. The [Assistant Commissioner, Design and Right of Way] **Director, Division of Regional Design**, shall schedule an informal hearing within 10 days of his or her receipt of the applicant's appeal. **The Director, Division of Regional Design, may conduct the hearing or designate a Regional Design Engineer as hearing officer.** At the hearing, the applicant will be accorded an opportunity to present further information justifying the acceptance of the access plan.

5. In reaching the final agency decision, the [Assistant Commissioner, Design and Right of Way] **Director, Division of Regional Design**, shall consider the **information presented at the hearing and the recommendation of the hearing officer if designated and the** criteria set forth in the Act and these regulations, the lot owner's right of reasonable access to the general system of streets and highways in the State and the public's right and interest in a safe and efficient highway system. The [Assistant Commissioner, Design and Right of Way] **Director, Division of Regional Design**, shall render the final agency decision, with reasons, within 10 days of the informal hearing and so notify the applicant in writing.

16:47-4.35 Waivers

(a) (No change.)

(b) If an applicant wishes to seek a waiver, a request must be submitted as an attachment to the permit application. **A request for waiver form (MT-159) shall be prepared by the applicant.** The

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request for waiver shall state reasons why a waiver is appropriate and include documentation to support the waiver.

(c)-(h) (No change.)

APPENDIX B

STATE HIGHWAY ACCESS LEVELS BY ROUTE AND MILEPOST ACCESS LEVEL (AL)

1.-6. (No change.)

DESIRABLE TYPICAL SECTIONS CODES (DTS) & RIGHT OF WAY WIDTHS (R.O.W.) DESCRIPTION

ROUTE	MILEPOST BEGIN	MILEPOST END	AL	DTS	CELL
...					
20	0.00	0.70	[2]3	6A	4
...					
21	0.00	0.91	[2]3	6B	1
...					
40	1.85	[5.60]**2.60**	[2]3	4A	[31]7
40	**2.60**	**5.60**	**2**	**4A**	**31**
...					
208	3.55	5.12	[2]3	6A	1
...					

(a)

DIVISION OF TRANSPORTATION ASSISTANCE BUREAU OF SUBURBAN MOBILITY

Employer Trip Reduction Program (ETRP)

Proposed New Rules: N.J.A.C. 16:50

Authorized By: William D. Ankner, Director, Division of Policy and Capital Programming.

Authority: N.J.S.A. 27:26A-1 to 27:26A-14 (P.L. 1992, c.32—"New Jersey Traffic Congestion and Air Pollution Control Act"); N.J.S.A. 27:1A-5, 27:1A-6; and Section 182(d)(1)(B) of the Clean Air Act Amendments (CAAA) of 1990 (42 U.S.C. Section 7511a(d)(a)(B).

Proposal Number: PRN 1993-377.

Public hearings on the proposed new rules will be held on:

Tuesday, August 3, 1993 from 1:00 P.M. to 4:00 P.M.
Multi-Purpose Room
Engineering and Operations Building
Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

Thursday, August 5, 1993 from 1:00 P.M. to 4:00 P.M.
Municipal Building
820 Mercer Street
Cherry Hill, New Jersey 08002-2688

Thursday, August 12, 1993 from 11:00 A.M. to 2:00 P.M.
Municipal Building
900 Clifton Ave.
Clifton, New Jersey 07013

Submit written comments by September 2, 1993 to:

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

The agency proposal follows:

Summary

Statutory Authority: To reduce traffic congestion in the State and comply with the pollution reduction requirements of the 1992 State statute, "New Jersey Traffic Congestion and Air Pollution Control Act" (Act) (P.L. 1992, c.32) (N.J.S.A. 27:26A-1 to 27:26A-14) and the 1990 Federal Clean Air Act Amendments (42 U.S.C. Section 7511a(d)(1)(B), the New Jersey Department of Transportation (Department) is proposing new rules to implement an "Employer Trip Reduction Program (ETRP)" as N.J.A.C. 16:50. The ETRP will require certain New Jersey employers located in areas of the State designated by the Federal government as "severe" ozone non-attainment areas, to develop and implement programs at their work locations to reduce vehicle trips and vehicle miles travelled to the work location by encouraging employees to use public transit, share rides in carpools and vanpools, or use another commute alternative. These work locations programs are termed employee commute options (ECO) programs.

Affected Employers: The ETRP rules would apply to **employers that have work sites with 100 or more workers per work location** in any one or more of 18 New Jersey severe ozone non-attainment counties (Atlantic, Cape May, and Warren counties are not included). An employer may apply for exemption if: (1) it employs 100 or more workers for fewer than six months of any consecutive 12-month period, or (2) fewer than 33 of its 100 or more employees arrive at the work location during the peak commuting period, defined as the time between 6:00 A.M. and 10:00 A.M. (inclusive), Monday through Friday.

ETRP Requirements: As outlined in this notice of proposal, the rules would require seven actions of affected employers. An employer would be required to:

1. Register with the Department as an employer subject to the provisions of these rules;
2. Designate an Employee Transportation Coordinator (ETC) at each work location with 100 or more employees to administer the work location ECO program;
3. Periodically survey employees at each affected location to determine their commute patterns;
4. Develop and submit to the Department ETRP compliance plans that describe actions the employer will take to reduce employee vehicle commute trips to the location. Prior to its submittal to the Department, the plan must be certified by a Department-approved "certifier," as to its accuracy and likely "efficacy" in reducing vehicle trips;
5. Implement, in good faith, the program outlined in the plan at the work location;
6. Increase the average passenger occupancy (APO) at the work location by not less than 25 percent over the average vehicle occupancy (AVO) for the area; and
7. Maintain the target APO after achieving the target.

ETRP Implementation Schedule: The Department expects the final rules to be adopted by November 1993. Once the rules are effective, the Department of Labor will notify employers of the deadline for employer registration. In addition, each employer would be required to meet several key deadlines, to be in compliance with the rules:

November 15, 1994: Submit an Initial Plan, that documents its starting Average Passenger Occupancy (APO) and specifies the actions the employer would implement to increase the APO to a target APO set by the Department.

November 15, 1996: Submit an Update Plan that documents its updated APO. An employer that has not achieved the target by this date would include in this plan a description of additional actions the employer would take to reach the target within the next year.

November 15, 1997: An employer that did not reach the target in 1996 would submit an APO Report to the Department, documenting the increase in APO achieved since the 1996 plan was submitted.

Post 1997: Maintain the target APO.

Performance Targets—APO and AVO: The Department has established average passenger occupancy (APO) as the performance measure for the program. APO is defined as the number of employees arriving at a work location between 6:00 A.M. and 10:00 A.M. (inclusive, Monday through Friday), divided by the number of vehicles in which they arrive. Qualified vanpool vans, transit vehicles, non-motorized vehicles, and clean fuel vehicles are counted as zero vehicles in the calculation.

The Department has established four target APOs, one in each of four distinct geographic areas of the State. An employer in these areas will be required to document achievement of the APO target specified for its area by November 15, 1996. As required by the Federal and State laws, the target APOs have been set at a level 25 percent above the average vehicle occupancy for the areas. The four areas and their target APOs are as follows:

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	Target APO
1. **Urbanized Area Zone (three sub-area targets)**	
Sub-area 1: Urban Core (Newark CBD, Jersey City, Hoboken) covering zip codes: 07030, 07102, 07302, 07303, 07306, 07310, and 07311	1.97
Sub-area 2: Remainder of Hudson County	1.73
Sub-area 3: Counties of Bergen and Union, remainder of Essex County, and Clifton, Passaic, and Paterson in Passaic County	1.46
2. **Suburban Area Zone (one area-wide target):** Counties of Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Somerset, Salem, Sussex, and Passaic (except Clifton, Paterson, and Passaic)	1.40

Plan Filing Fees: The rules will require that plans submitted to the Department be accompanied by a filing fee, with the amount defined by the number of employees at the location:

100 to 499 employees: $200.00 for the initial plan, $400.00 for the update plan

500 to 749 employees: $400.00 for the initial plan, $800.00 for the update plan

750 to 999 employees: $600.00 for the initial plan, $1,200 for the update plan

1,000 or more employees: $800.00 for the initial plan, $1,600 for the update plan

Penalties for Non-Compliance: In accordance with the State law, the rules will assess the following civil penalties for violations:

- $250.00 per month (first two months), $500.00 per month (additional months) for failure to register with the Department;
- $1,000 per month for failure to submit an approvable plan to the Department;
- $5,000 per month for failure to meet the target APO by the deadline.

All other violations will be subject to a maximum penalty of $250.00 per month.

Waivers of Penalties and/or Requirements of these Rules: An employer that implemented its plan in good faith as defined by the Department, but was unable to meet the target APO, would be permitted to petition the Department for a waiver of the penalty for not meeting the target. In deciding whether to grant the waiver, the Department could consider a series of actions the employer could have taken, examples of which are presented in the rules, as tests of their good faith.

The proposed new chapter is summarized as follows:

Subchapter 1, Authority, describes the statutory authority for the rules.

Subchapter 2, Definitions, explains the meaning of the words and terms used in the rules.

Subchapter 3, Scope and Requirements, identifies who must comply with the rules and outlines what is required of them.

Subchapter 4, Employer Notification, outlines the procedure to be used by the Department in notifying those employers that must comply with the rules.

Subchapter 5, Employer Registration, establishes registration deadlines and the requirements for registering with the Department of Transportation.

Subchapter 6, Average Vehicle Occupancy (AVO) Zones and Average Passenger Occupancy (APO) Targets, designates average vehicle occupancy zones and average passenger occupancy targets.

Subchapter 7, Average Passenger Occupancy (APO) Survey, outlines the procedure for surveying employees and calculating the average passenger occupancy based on the survey results.

Subchapter 8, Compliance Plans and APO Reports, establishes the procedures and schedules to be followed in the implementation of compliance plans and filing plan fees.

Subchapter 9, Plan Certification, establishes the procedure to certify compliance plans as to accuracy and efficacy and establishes the standards required for certifiers.

Subchapter 10, Compliance Plan Review, establishes time frames and procedures the Department will institute in reviewing compliance plans.

Subchapter 11, Enforcement and Penalties, provides for the conduct of audits to ascertain whether or not the employer is in compliance and establishes penalties for noncompliance.

Subchapter 12, Extensions, Exemptions, and Waivers, establishes criteria whereby employers may petition the Department for extensions of deadline, exemption from being subject to the rules, and waiver from the penalty for failure to meet the APO targets. Fees are also established for requests for extensions, exemptions, and waivers. "Good faith effort" is defined.

Subchapter 13, Appeals, provides the opportunity for employers to appeal the penalty assessed when found to be in noncompliance with any provision of the rules, and provides the opportunity for certifiers to appeal revocation of certification authority.

Social Impact

The proposed new rules will impact peak period commuters in the State as well as the general public. These rules require large employers to implement actions and incentives to encourage employees to reduce their commute trips, reduce commuter vehicle miles of travel and increase average passenger occupancy of their commute vehicles. These changes are needed to increase mobility for all citizens of New Jersey and to reduce air pollution created by commuting.

In the 1980s, New Jersey experienced suburban sprawl, resulting in significant growth in vehicular traffic in many areas of the State. As a result, traffic in some locations exceeds the capacity of existing roadways, leading to traffic congestion that impedes the safe, efficient movement of people and goods, constrains future economic development in those areas, and contributes to inefficient use of energy.

Air pollution related to vehicular travel also became a concern in New Jersey. The State is one of many in which air pollution severely exceeds Federal clean air standards for ozone and carbon monoxide, both health-threatening pollutants substantially caused by motor vehicle exhaust. In New Jersey, nearly 90 percent of all carbon monoxide pollution can be traced to mobile sources, and 50 percent of ozone pollution can be traced to automobile emissions. Automobile emissions react with sunlight to form ozone, a major component of urban smog.

Driving alone increases the demand on the State's roadway system and, while not the only factor, is a major cause of traffic congestion and air pollution, especially during peak commuting hours when vehicular traffic exceeds road capacities and congestion occurs. Implementation of measures that encourage increased use of alternatives to single occupant vehicle commuting have shown to be effective in reducing vehicle trips, miles of travel, and congestion. The requirements of the law will change the way employers manage their work sites and will encourage employees to reconsider commute alternatives. It will also impact the way government plans its transportation improvement programs and encourages better land use planning. It will make employers more active partners in the transportation decision-making process.

Economic Impact

The proposed new rules apply to public, private, institutional and nonprofit employers that have 100 or more employees per work location in any one of 18 of 21 counties (excluding Atlantic, Cape May and Warren Counties). Employers will be required to pay initial plan filing fees ranging from $200.00 to $800.00 (based upon the number of employees) and update plan filing fees ranging from $400.00 to $1,600. Additionally these rules establish civil penalties ranging from $250.00 to $5,000 per month for noncompliance and a maximum penalty of $250.00 per month for all other violations outlined in these rules. The Department will incur significant costs for the administration and implementation of the Employer Trip Reduction program (in excess of $1 million annually). Employers who must comply with these rules will also incur significant costs, estimated at $100.00 to $200.00 per employee per year. Employer costs will include plan preparation, plan implementation, and plan certification. Approximately 5,500 employers will be subject to these rules with a workforce of about 1.7 million persons, or 48 percent of the State's workforce. An employer that has exerted a good faith effort with this program may apply to the Department for a waiver from the penalties. Of the employers that are affected by these rules by virtue of their work site employment, only those that do not employ 100 or more workers for six months of the year or more, or those with fewer than 33 employees reporting between 6:00 A.M. and 10:00 A.M. may apply for an exemption. Failure to implement the ETR Program as required by the Federal government would result in USEPA imposing sanctions required under Federal legislation which include the loss of several hundred million dollars annually in Federal transportation dollars **and** a prohibition on the relocation or establishment of any new industry in the State for which EPA/DEPE permits for stationary air pollution emissions are required. This would effectively stop almost all new industry from moving into the State and prohibit existing industry from substantially increasing production. Both sanctions would result in the loss of many jobs or job opportunities.

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Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore a regulatory flexibility analysis is not required. The rules apply to employers that have work sites with 100 or more workers per location, which is not considered to be a small business.

Full text of the proposed new rules follows:

CHAPTER 50
EMPLOYER TRIP REDUCTION PROGRAM

SUBCHAPTER 1. STATUTORY AUTHORITY

16:50-1.1 Statutory authority

(a) To reduce traffic congestion in the State and comply with the Clean Air Act Amendments (CAAA), in June, 1992 the New Jersey State Legislature passed State legislation, P.L. 1992, c.32; N.J.S.A. 27:26A-1 to 27:26A-14, the "New Jersey Traffic Congestion and Air Pollution Control Act" (Act). The Act, which assigns responsibility for developing and administering the Employer Trip Reduction Progam to the New Jersey Department of Transportation, requires each employer with 100 or more employees at a single work location to develop and implement employee commute option (ECO) programs to reduce vehicle trips to the site by encouraging employees to use public transit, share rides in carpools and vanpools, or use another commute alternative. The Act further establishes a deadline, November 15, 1996, by which employers must achieve a target average passenger occupancy of passenger vehicles arriving at their work locations during the peak morning commuting period.

(b) Section 182(d)(1)(B) of the Clean Air Act Amendments (CAAA) of 1990 (42 U.S.C. Section 7511a(d)(1)(B)), requires states with pollution levels defined by the Federal government as "severe" or "extreme," of which New Jersey is one, to implement programs to reduce vehicular emissions. Further, states with severe or extreme ozone pollution are required to develop and implement "Employer Trip Reduction Programs," or ETRPs, designed to reduce work related vehicle trips and vehicle miles travelled during peak commuting periods in the ozone "non-attainment" areas.

(c) Consistent with the aforementioned State and Federal laws, this chapter establishes an Employer Trip Reduction Program to reduce traffic congestion and air pollution in the State of New Jersey.

SUBCHAPTER 2. DEFINITIONS

16:50-2.1 Definitions

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

"Act" means "New Jersey Traffic Congestion and Air Pollution Control Act" (P.L. 1992, c.32; N.J.S.A. 27:26A-1 to 14).

"Affected area" means a geographic area designated in N.J.A.C. 16:50-6, which is considered a highly congested area or is an ozone non-attainment area for which an ETR program is required under the Clean Air Act.

"Affected employee" means an employee, employed by an affected employer, who arrives at the work location during the peak period.

"Affected employer" means an employer that employs an average of 100 or more employees in at least one work location in an affected area of New Jersey.

"Affected work location" or "affected location" means a work location of an affected employer where 100 or more employees report to work or are assigned primarily for the purpose of performing work for the employer.

"Alternative fuel vehicle" means a vehicle fueled or propelled by energy sources that are non-polluting or produce emissions substantially below those of gasoline-powered vehicles. Alternative fuels shall include: electricity, natural gas, propane, methanol, and other fuels as defined in The Comprehensive National Energy Policy Act of 1992, Title 3: Section 301, Public Law 102-486, approved October 24, 1992.

"Alternative work schedule" means a compressed work week schedule, flextime or other flexible work hours schedule, or staggered work hours schedule.

"Average passenger occupancy" or "APO" means the average passenger occupancy of commuting vehicles arriving at an employer's affected location during peak periods, as calculated by the formula in N.J.A.C. 16:50-7.

"APO Survey" means the survey of affected employees' commute patterns required to be conducted at an affected location by affected employers in accordance with N.J.A.C. 16:50-7.

"Average vehicle occupancy" or "AVO" means the average occupancy of all commuting vehicles arriving at all work locations within an AVO zone of an affected area during the peak period.

"Average vehicle occupancy zone" or "AVO zone" means an ozone non-attainment area or portion of a non-attainment area as described in N.J.A.C. 16:50-4.

"Carpool" means a group of two to six employees commuting to and from work by means of a vehicle with a seating capacity of 15 or fewer adult occupants.

"Clean Air Act" means the Federal Clean Air Act, as amended by Pub. L. 101-549 (42 U.S.C. §§7401 et seq.) and as subsequently amended or supplemented.

"Commissioner" means the Commissioner of Transportation of the State of New Jersey.

"Commute alternative" means travel between a person's place of residence and place of employment, other than in a motor vehicle occupied by one person. Commute alternatives include, but are not limited to, public transportation, carpools, vanpools, buspools, ferries, bicycling, and walking, which may be used independent of or in conjunction with alternative work schedules, teleworking and like measures. For purposes of these rules, teleworking and telecommuting are considered commuting alternatives.

"Compliance plan" or "plan" means a plan an affected employer is required to submit to the Department in accordance with N.J.A.C. 16:50-8.

"Compressed work week" or "compressed work schedule" means a schedule in which employees work 35 or more hours in fewer than five work days or more than 70 hours in fewer than 10 work days. Compressed work schedules shall include: "Four day-40 hour," "Three day-36 hour," "Nine day-80 hour," "Nine day-72 hour" schedules, and other work schedules that reduce the number or frequency of commute trips.

"Consolidated plan" means a plan, submitted by one employer for two or more of the employer's distinct work locations within a target APO sub-area, or submitted by several employers with work locations within a target APO sub-area, that satisfies the plan submittal requirement of N.J.A.C. 16:50-8 for each of the work locations.

"Department" or "DOT" means the New Jersey Department of Transportation.

"Employee" means a partner or limited partner in a partnership, or any person employed by an employer, in a full-time or part-time; permanent, temporary, or contract position, excluding volunteers, who either reports to work or is assigned primarily to a work location 80 or more hours per 28-day period for at least two months in any four consecutive months. Contract position is one in which the employee reports to the work location for a period of at least six months and whose work hours and assignments are defined by the employer at any time after (the effective date of this chapter).

"Employee commute options (ECO) program" means a program, required to be implemented by an affected employer at a work location in accordance with this chapter to reduce vehicle trips to the work location during the peak period, increase the location APO, or reduce commute trip vehicle miles travelled by employees at the location.

"Employee transportation coordinator (ETC)" means an employee appointed by an employer to develop and administer an employee commute options (ECO) program at a work location.

"Employer" means any person, partnership, association, corporation, institution, trust, legal representative or any organized group of persons which hires or employs employees in New Jersey and shall also include all public and quasi-public employers, including

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without limitation the United States and any of its governmental instrumentalities, the State of New Jersey and its instrumentalities, State departments or agencies, and subdivisions, other government departments and agencies, and all State and bi-state authorities, corporations, commissions, boards, and like bodies.

"Employer trip reduction program" or "ETRP" means the program, required to be implemented by the State of New Jersey under the CAAA, to reduce vehicle trips arriving at work locations within the State and vehicle miles travelled by employees arriving at those work locations.

"Government employer" means the United States and any of its governmental instrumentalities, the State of New Jersey and its instrumentalities and subdivisions, and county and municipal governments.

"Highest ranking responsible officer" means the president, executive or managing director, other chief executive or operating officer, or other highest ranking employee located at an affected work location, who has primary responsibility for the operation and management of the work location.

"Independent government employer" means an independent or semi-autonomous State authority, corporation, commission, board or like body which does not receive State appropriations and shall also include any bi-state authority which has work locations within the State, and the South Jersey Port Corporation notwithstanding that it may receive a State appropriation.

"Peak period" means the time period between the hours of 6:00 A.M. and 10:00 A.M. inclusive, Monday through Friday.

"Public transportation" means rail passenger service, motorbus regular route service, paratransit service, and motorbus charter service or other transportation services available to the traveling public whose purpose is to carry passengers between two or more points.

"Single occupant vehicle (SOV)" means a motor vehicle used for commuting purposes occupied by only one person.

"State department or agency" means a department or agency of the Executive, Legislative, or Judicial branches of State government.

"Subchapter" means a subchapter of these rules.

"Teleworking" or "telecommuting" means a strategy in which an employee substitutes the location at which its work is performed; that is, work usually done at the work location is instead done at the employee's residence or satellite work location, such that the employee makes a total or partial substitution for a commute trip to the affected work location on a teleworking day.

"Transportation management association (TMA)" means a nonprofit corporation that coordinates local commuter transportation services, including, but not limited to, public transportation, vanpools, carpools, bicycling and pedestrain modes, as well as strategies such as alternative work hours; and provides other similar services for New Jersey corporations, employees, developers, individuals, and other groups.

"Travel demand management (TDM)" means a system of actions whose purpose is to alleviate traffic-related problems through improved management of vehicle trip demand. These actions, which are primarily directed at commuter travel, are structured to reduce the dependence on and use of single occupant vehicles, or to alter the timing of travel to other, less congested time periods, or both.

"Vanpool" means a group of seven or more employees commuting to and from work by means of a vehicle with a seating capacity of not more than 15 adult occupants.

"Vehicle" means a highway vehicle powered by a gosoline or diesel internal combustion engine with fewer than nine seating positions for adults and used for commuting purposes.

"Work location" or "location" means an area, building, or grouping of buildings located within the target APO area, which are in actual physical contact or separated only by a private or public roadway or other private or public right-of-way, which are under the ownership, operation, or control of the same employer, and where employees perform work. Businesses that are operated separately and distinctly shall be considered separate work locations even if they are owned by the same employer and are physically located in the same or adjacent buildings.

SUBCHAPTER 3. SCOPE AND REQUIREMENTS

16:50-3.1 Scope

The requirements of this chapter apply to all affected employers as defined in N.J.A.C. 16:50-2, including government employers, except that affected employers that have fewer than 33 employees reporting to work during the peak period or that employ 100 employees for fewer than six months of any consecutive 12-month period may apply to the Department for an exemption from the requirements of this chapter.

16:50-3.1 Employer requirements

(a) Seven actions are required of affected employers. An affected employer shall:

1. Register with the Department as an employer subject to the provisions of this chapter (N.J.A.C. 16:50-5);

2. Designate an employee transporation coordinator (ETC) at each affected work location (N.J.A.C. 16:50-8);

3. Periodically conduct an APO survey of its employees at each affected work location to determine employees' current commute patterns and report the results of the survey to the Department (N.J.A.C. 16:50-7);

4. Develop and submit to the Department by November 15, 1994 and in subsequent years as required by this chapter, compliance plans that describe activities to be implemented at the location under an employee commute option (ECO) program (N.J.A.C. 16:50-8);

5. Implement the program outlined in the compliance plan (N.J.A.C. 16:50-8);

6. No later than November 15, 1996, increase the average passenger occupancy (APO) at each affected location by not less than 25 percent over the average vehicle occupancy (AVO) for the AVO zone (N.J.A.C. 16:50-6); and

7. Maintain the target APO after achieving the target.

(b) An affected employer failing to undertake any or all of these actions shall be considered in violation of this chapter and shall be subject to penalties in accordance with N.J.A.C. 16:50-12.

SUBCHAPTER 4. EMPLOYER NOTIFICATION

16:50-4.1 Notification mailing

(a) The Department shall notify employers, by the following procedure, of the requirements of this chapter:

1. Not later than October 31, 1993, or one week after the effective date of this chapter, whichever is later, the Department of Labor (DOL) shall notify affected employers by certified mail, and all other employers by regular mail, of their obligations under the ETRP rules. The notification letter shall outline the procedure for employer registration and be accompanied by a standard registration form described in N.J.A.C. 16:50-5.

2. In each year after the initial notices are mailed, DOL shall send notices to any affected employer added to the list since the previous notification mailing.

3. DOL shall transmit copies of all mailing lists to DOT within seven calendar days of the date of each mailing of notification.

16:50-4.2 Published notice

Not later than October 31, 1993, or two weeks after the effective date of this chapter, whichever is later, and annually threafter, the Department of Transportation shall publish a general informational notice of New Jersey employers' obligations under this chapter. The notice shall provide information on how employers can obtain required forms from the Department and shall establish a date by which affected employers must return a completed form to the Department. The Department shall publish the notice beginning on the date of the first notification mailings and shall run the notice for at least three days over a two week period in at least six newspapers having circulation in various parts of the State. The Department also shall publish the notice in the first New Jersey Register released after the date of the first notification mailings.

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SUBCHAPTER 5. EMPLOYER REGISTRATION

16:50-5.1 Registration deadlines

(a) By the due date specified in the notification mailing and as published in the public notice (see N.J.A.C. 16:50-4), each affected employer shall submit a completed standard registration form to the Department. Notwithstanding that an employer may not have been mailed or received the notice or form from the Department of Labor, an affected employer shall in any event complete the required registration form, copies of which may be obtained upon request from the Department of Transportation, and submit the completed form to the Department by the deadline specified in the published notice.

(b) Each employer that receives a notification packet shall respond even if the employer believes it is not subject to this rule. An employer that does not meet the definition of affected employer shall not be required to submit the standard registration form, but shall submit an ETRP return card for non-affected employers, included in the notification packet, indicating the reason for non-applicability. The Department may request the employer to submit additional documentation to verify the employer's non-affected status.

(c) An employer that is not subject to this chapter at the time the first notices are mailed, but that subsequently becomes an affected employer, shall submit a registration form to the Department within 60 days of becoming an affected employer.

(d) An affected employer that moves its work location after registering with the Department must submit a new registration form within 60 days after the date of the relocation.

16:50-5.2 Completion and submittal of registration form

(a) Each affected employer shall complete a standard registration form for each affected location in New Jersey. The form must be signed by the highest ranking responsible officer at the location who shall attest to the accuracy of the information reported. An employer shall provide the following information on the form:

1. The name of the employer and address of the work location;
2. The name and telephone of the highest ranking responsible officer at the location;
3. Designation of the location as a single site, headquarters, or branch;
4. The total number of employees at the location and the number assigned to report to the work location during the peak period; and
5. The name, telephone number, and address (if different from that named in (a)1 and 2 above) of the employee transportation coordinator (ETC) at the location to receive APO survey and compliance plan forms and who will serve as the employer's contact with the Department.

(b) An affected employer with more than one location in New Jersey shall complete a separate registration form for each affected location, but individual registration forms may be submitted together. The employer shall designate an ETC the Department may contact at each location. Notwithstanding this provision, an affected employer may designate a single contact person to receive APO survey and compliance plan forms for all affected locations.

SUBCHAPTER 6. AVERAGE VEHICLE OCCUPANCY (AVO) ZONES AND AVERAGE PASSENGER OCCUPANCY (APO) TARGETS

16:50-6.1 Designation of ETRP performance measure

The Department has established average passenger occupancy (APO) at an affected work location as the performance measure against which an employer's compliance with the State's ETR program will be measured. APO is a measure of the average occupancy of passenger vehicles arriving at a single affected location, and is equal to the number of employees arriving at the location during the peak period divided by the number of passenger vehicles in which the employees arrive at the same location during the peak period.

16:50-6.2 Designation of ETRP performance targets

The Department has established four performance targets, called target APOs, each to apply in a distinct, designated affected area of the State as described in (c) below. The performance target for each area has been set as 125 percent of the average vehicle occupancy (AVO), the average occupancy of all vehicles arriving at all work locations in the affected area, as measured by a 1992 telephone survey, conducted by the Department, of employees employed at New Jersey work locations.

16:50-6.3 Number of AVO Zones

(a) For the purpose of establishing ETRP performance targets, the Department has divided the State into two affected areas, hereinafter referred to as the Urbanized Area Zone and the Suburban Area Zone, that will be included in the ETRP. These areas, which were selected as areas with substantially similar development characteristics and availability of transportation services and facilities, are defined as follows:

1. The Urbanized Area Zone shall include the following New Jersey counties, inclusive except where otherwise noted:
i. Bergen County;
ii. Essex County;
iii. Hudson County;
iv. Union County; and
v. Passaic County, municipalities of Clifton, Paterson, and Passaic only

2. The Suburban Area Zone shall include the following New Jersey counties, inclusive except where otherwise noted:
i. Burlington County;
ii. Camden County;
iii. Cumberland County;
iv. Gloucester County;
v. Hunterdon County;
vi. Mercer County;
vii. Middlesex County;
viii. Monmouth County;
ix. Morris County;
x. Ocean County;
xi. Somerset County;
xii. Salem County;
xiii. Sussex County; and
xiv. Passaic County, all municipalities **EXCEPT** Clifton, Paterson, and Passaic.

16:50-6.4 Baseline AVO

The Department has determined baseline AVOs, that is, baseline levels of vehicle occupancy, for each AVO zone for the base year 1992 as follows:

AVO Zone Designation	Baseline AVO
Urbanized Area Zone	1.22
Suburban Area Zone	1.12

16:50-6.5 Target APO

The Department has calculated the target APO for each AVO Zone at 25 percent above the baseline AVO for the zone (baseline AVO × 1.25). The Department further has established target APOs that affected employers in each zone must meet. In the Urbanized Area Zone, three sub-area targets have been established based on the employment density of the sub-area. In the Suburban Area Zone, a single target APO has been established. Target APOs for affected areas in each zone are as follows:

AVO Zone Designation	Target APO
1. **Urbanized Area Zone**	
i. **Sub-area 1**: Urban Core (Newark CBD, Jersey City CBD and Hoboken) covering zip codes: 07030, 07102, 07302, 07303, 07306, 07310, and 07311	1.97
ii. **Sub-area 2**: Remainder of Hudson County	1.73
iii. **Sub-area 3**: Bergen County, Union County, remainder of Essex County, and Clifton, Passaic, and Paterson in Passaic County.	1.46
2. **Suburban Area Zone (entire zone)**	1.40

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16:50-6.6 Deadline for compliance with the target APO

Not later than November 15, 1996, each affected employer is required to increase the APO at the employer's affected work location during the peak period to the target APO of the zone in which the employer is located. An employer that has achieved the target APO is required to maintain the location APO at a level at least as high as the target APO, but is not required to increase its APO beyond the target APO. Each affected employer shall document achievement of the target APO at each affected location through the APO survey, described in N.J.A.C. 16:50-7, and report the location's compliance with the target APO to the Department in the Update Plan, in accordance with N.J.A.C. 16:50-8.

SUBCHAPTER 7. AVERAGE PASSENGER OCCUPANCY (APO) SURVEY

16:50-7.1 Requirement to survey

For the purpose of documenting the work location APO, each affected employer shall in 1994 and 1996 conduct APO surveys of the commute patterns of the employees who arrive at its location during the peak period. An employer that has not demonstrated achievement of the target APO by November 15, 1996 shall additionally conduct an APO survey in 1997. An affected employer with more than one location in the State shall conduct a survey at each affected location.

16:50-7.2 Notice of requirement to survey

The Department shall, within 180 days of receiving completed registration forms from affected employers, but not later than May 1, 1994, notify each affected employer of the requirement to conduct an APO survey and to develop and implement a compliance plan in accordance with the requirements of N.J.A.C. 16:50-8. The notice shall include copies of the required APO survey and compliance plan forms.

16:50-7.3 Survey procedure

(a) An affected employer shall conduct an APO survey of all employees assigned to report to the work location during the peak period, except as provided in (a)4 below, using the following procedure:

1. An employer shall use the standard APO survey form provided by the Department, and designed to collect information on the commute patterns of affected employees to allow the employer to calculate the work location APO as described in N.J.A.C. 16:50-7.5. The standard form shall be used without alteration, except that the Department may permit an employer to substitute a different survey form that collects information that is substantially similar to that collected by the standard form if the employer's form has been submitted to and approved by the Department, prior to administration of the survey. The Department shall have the authority to refuse approval of any form that could be expected, in the Department's judgement, to produce different survey results than if the standard form had been used. An employer shall be permitted to attach additional sruvey forms to the standard form, if desired, without prior approval of the Department.

2. Employers shall choose a typical week in which to conduct the APO survey. A week shall not be considered typical if it:

i. Includes a holiday observed by the employer;

ii. Immediately follows a week in which a holiday was observed on Friday or precedes a week in which a holiday will be observed on Monday;

iii. Is a week during which the employer holds a rideshare fair or other intensive information promotion related to the ECO program;

iv. Is a week in which the location has a partial or complete shutdown of its operation; or

v. Is a week with any other anomalous change or fluctuation in the number of employees reporting to the work location.

3. APO surveys conducted for subsequent plan submittals (1996, 1997 and after, if required) shall not be conducted earlier than April in the submittal year.

4. An affected employer shall survey all affected employees arriving at the affected location during the peak period in the survey week, except that an employer with 1,000 or more employees arriving at a single location during the peak period may survey a random sample of those employees. Employers desiring to conduct a random sample survey shall submit to the Department a sampling methodology that is recognized as statistically valid with a 95 percent confidence level, and with documentation that the person or persons conducting the survey have the qualifications to ensure the survey will be conducted in a statistically valid manner. The Department shall grant or deny approval for the random survey within 30 days of receipt of the methodology.

5. An affected employer shall achieve an APO survey response rate of at least 75 percent of all employees assigned to report to the affected work location during the peak period. An employer that fails to achieve at least a 75 percent response rate on any APO survey shall re-conduct the survey until the required response rate is achieved. Alternatively, an employer may choose to count each affected employee that did not respond to the survey as having arrived at the location in a single occupant vehicle.

6. An affected employer may use its own staff to conduct the APO survey or arrange with a market research or transportation consultant, local government, TMA, or other entity outside the employer to conduct the survey.

16:50-7.4 Reporting of survey results

An affected employer shall tabulate the APO survey results and report the results to the Department on a standard form provided by the Department. An employer shall submit the APO survey results as a component of the compliance plan in accordance with N.J.A.C. 16:50-8. In years in which the employer is required to document its work location APO to the Department but is not required to submit a plan, survey results shall be submitted alone as an APO survey report.

16:50-7.5 Calculating work location APO

(a) An affected employer shall demonstrate its compliance with the ETRP by documenting achievement of the target APO as described in 16:50-6. The Department shall measure each affected employer's performance, as documented by the work location APO, against the target APO.

1. An employer shall calculate the APO for its work location from the results of the APO survey as follows:

$$\text{Work Location APO} = \frac{\text{Number of Employees Arriving}}{\text{Number of Vehicles Arriving}} \quad \text{where:}$$

Employees Arriving is: total number of employees arriving at the location between 6:00 A.M. and 10:00 A.M., Monday through Friday of the survey week, and

Vehicles Arriving is: total number of passenger vehicles in which employees arrive at the location between 6:00 A.M. and 10:00 A.M., Monday through Friday of the survey week.

To illustrate the calculation of APO, the following example is provided:

	Mon.	Tue.	Wed.	Thur.	Fri.	Total Week
No. Employees	200	200	200	200	200	1,000
No. Vehicles	165	170	180	175	170	860

$$\text{Work Location APO} = \frac{\text{1,000 Employees Arriving}}{\text{860 Vehicles Arriving}} = 1.16$$

2. Calculation of affected location APO shall count employees arriving at the location during the peak periods, Monday through Friday of the survey week as follows:

i. Each employee that arrives at the location during the peak period shall be counted as one employee arriving for each of the days Monday through Friday of the survey week that the employee reports to the location, regardless of the length of time the employee remains at the location.

ii. Each employee that teleworks all day from the employee's home or a satellite work location shall be counted as one employee arriving for each day the employee teleworks.

iii. Each employee that works a compressed work week shall be counted as one employee arriving for each day not reporting to the affected work location.

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iv. Beginning in 1995 and in any subsequent year, each employee that arrives at the location at a time other than the peak period, but that arrived during the peak period during the survey week documented in the approved 1994 plan, shall be counted as one employee arriving for each survey day the employee arrives at the work location.

3. For calculation of APO, the count of vehicles arriving shall include:

i. Passenger cars and trucks, with fewer than seven employees; and

ii. Motorcycles and mopeds.

4. The following shall be counted as zero vehicles arriving:

i. Vanpools with seven or more employees;

ii. Public or private buses, trains, or other mass transportation vehicles;

iii. Bicycles and other non-motorized vehicles; and

iv. Alternative fuel vehicles.

5. An employee that works a compressed work week or teleworks the entire day at home shall be counted as arriving at the work location in a zero vehicle on the day he or she does not report to the affected work location.

6. Beginning in 1995 and in any subsequent year, each employee that arrives at the location at a time other than the peak period, but that arrived during the peak period in the most recent survey week, shall be counted as arriving at the work location in a zero vehicle on each survey day the employee arrives at a time other than the peak period.

7. An employee that is dropped off at the work location by another employee or employees commuting to their work location or locations shall be counted as arriving in a share of a vehicle proportional to the number of occupants in the vehicle. An employee that is dropped off at the work location by a person not traveling to his or her work location shall be counted as arriving in a single occupant vehicle.

8. An employee that commutes in a commute alternative for 50 percent or more of the total length of his or her work trip or in a commute alternative for 10 or more one-way miles, whichever is less, shall be counted as arriving in that commute alternative in the APO calculation.

9. An employee that works all day at a satellite work location which is not more than 10 miles and not more than 50 precent of the distance from the employee's home to the primary work location shall be counted as arriving in a zero vehicle.

10. An affected employer shall not count employees who are handicapped and require the use of a single-occupant vehicle for commuting in the APO calculation.

11. An affected employee that does not respond to the APO survey as described in N.J.A.C. 16:50-7.3(a)4 shall be considered for purposes of the APO calculation to have arrived at the work location in a single-occupant vehicle and be counted as one employee arriving in one vehicle. Notwithstanding this provision, however, if the employer has achieved a response rate among employees scheduled to report during the peak period of the survey week of 90 percent or higher, nonresponding employees shall be assumed to have commute patterns proportional to the patterns of respondents.

SUBCHAPTER 8. COMPLIANCE PLANS AND APO REPORTS

16:50-8.1 Requirements

Each affected employer shall prepare and implement compliance plans and APO reports in accordance with the procedures and schedules established in this subchapter.

16:50-8.2 Plan and report submittal schedule

(a) Each affected employer shall submit compliance plans and APO reports, as described in N.J.A.C. 16:50-8.4 and 8.5, respectively, to the Department in accordance with the following schedule:

1. Not later than November 15, 1994, each affected employer shall prepare and submit to the Department an initial compliance plan for each of its affected work locations. An employer that becomes an affected employer after May 1, 1994 shall be given a minimum of 180 days from the date it registers with the Department, as required by N.J.A.C. 16:50-6, to prepare and submit an initial compliance plan. This employer further shall not be required to demonstrate achievement of the target APO in effect on the date of the initial submittal until one year following submittal of the initial plan or November 15, 1996, whichever is later.

2. Not later than November 15, 1996, each affected employer shall prepare and submit to the Department an update plan for each work location as described in N.J.A.C. 16:50-8.4.

3. After November 15, 1996, each employer shall maintain the target APO for the employer's area. Additional compliance plans demonstrating achievement and maintenance of the target APO shall be required if mandated by the Federal Environmental Protection Agency (EPA), or if required by the New Jersey Department of Environmental Protection and Energy to comply with EPA's mandated State Implementation Plan requirements, or if an employer is not in compliance with the required target APO.

4. Not later than November 15, 1997, each affected employer whose 1996 APO survey showed it did not meet the target APO for an affected work location shall prepare and submit to the Department an APO Survey Report for each such work location documenting the results of a 1997 survey.

5. An affected employer that moves its work location within the State, desires to modify the elements of its compliance plan, or experiences a change in its work location operations that could reasonably be expected to affect the appropriateness or effectiveness of an approved compliance plan, shall submit a revised plan within 90 days of the change.

16:50-8.3 Plan filing fees

(a) Each affected employer shall submit a filing fee upon submittal of a compliance plan in accordance with the following fee schedule:

1. For locations with 100 to 499 employees, $200.00 for the initial filing and $400.00 for each subsequent biennial filing.

2. For locations with 500 to 749 employees, $400.00 for the initial filing and $800.00 for each subsequent biennial filing.

3. For locations with 750 to 999 employees, $600.00 for the initial filing and $1,200 for each subsequent biennial filing.

4. For locations with 1,000 or more employees, $800.00 for the initial filing and $1,600 for each subsequent biennial filing.

(b) Notwithstanding the fee schedule described in (a)1 above, an employer with more than five affected locations shall not pay a combined fee of more than $4,000 for an initial filing or more than $8,000 for future biennial filings.

(c) An employer submitting a consolidated plan shall pay a filing fee equal to the fee the employer would pay if filing a plan for its work location alone.

(d) Government employers other than independent government employers shall be exempt from the payment of filing fees.

16:50-8.4 Components of a standard plan

(a) An affected employer shall prepare the compliance plan using a standard compliance plan form developed by the Department. The plan will include all information required by the standard plan form, including the following:

1. The name of the affected employer, address of the work location, and name, title, and signature of the employee transportation coordinator (ETC) at the work location appointed by the employer;

2. The results of the latest and most recent past annual APO surveys and a description of the procedure used to conduct the APO survey;

3. A description of the physical and transportation service characteristics of the work location, and demographic, work, and travel-related characteristics of the employee population;

4. A description of ECO strategies currently available to employees at the work location and additional ECO strategies the employer will implement at the work location. An employer desiring advice and suggestions on ECO strategies should refer to resource materials provided by the Department. One strategy that could be included, as encouraged by the Act (Section 5(l)) is a reduction in

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the number of parking spaces available for employees at work locations and designation of the most desirable parking spaces as reserved for high occupancy vehicles;

5. Activities planned by the employer to implement the ECO program and a time schedule for implementation of the program;

6. A description of the process by which the employer will periodically monitor and review progress toward the APO target; and

7. For update plans only; a discussion of the employer's "good faith efforts," described in N.J.A.C. 16:50-12.5, to achieve the target APO, an explanation of why the ECO strategies included in the last plan did not produce the target, and a discussion of how the employer plans to achieve the target within one year.

(b) Each affected employer shall provide information included in (a)1 through 6 above in the initial plan to establish a baseline against which future years can be compared. Beginning with the 1996 update plan and for any subsequent update plan, an affected employer that has not achieved the target APO also shall provide the information described in (a)7 above.

16:50-8.5 Required components of compliance plan submittals

(a) A complete compliance plan submittal to the Department shall consist of the following elements:

1. An executive summary plan that shall consist of a cover sheet that includes information described in N.J.A.C. 16:50-8.4(a)1 and 2, and a summary, prepared by the certifier as described in N.J.A.C. 16:50-9, of information included in N.J.A.C. 16:50-8.4(a)4 through 6;

2. The appropriate filing fee as specified in N.J.A.C 16:50-8.3;

3. Letter signed by the highest ranking responsible officer at the work location who shall attest that the employer will implement the plan as described, retain all ECO documents on file, as required by N.J.A.C. 16:50-8.10, and make such documents available for review by the Department or its agent;

4. A letter signed by the highest ranking responsible officer at the work location or plan preparer, if different from the employer, who shall attest to the correctness of the information included in the plan; and

5. A letter signed by an approved certifier who has reviewed and certified the plan in accordance with the procedures established in N.J.A.C. 16:50-9.

16:50-8.6 Required components of APO survey reports

(a) A complete APO survey report submittal will consist of the following
elements:

1. A completed APO survey report, prepared on standard forms provided by the Department; and

2. A letter signed by the highest ranking responsible officer at the work location or report preparer, if different from the employer, who attests to the accuracy of the information included in the report.

16:50-8.7 Consolidated plans and APO reports

(a) Beginning in 1996 and in any future year for which an affected employer is required to submit an update plan or APO survey report, an affected employer may submit a consolidated plan or report, as defined in N.J.A.C. 16:50-2, subject to the following provisions:

1. An employer with more than one affected location or two or more separate affected employers may submit a consolidated plan or report for any or all of the affected locations.

2. Employers submitting consolidated plans or APO reports shall average the APOs for the work locations participating in the consolidated plan. The average APO shall be calculated as follows:

i. The average APO for two or more work locations within a single target APO area shall be calculated as the total number of employees arriving at all participating locations during the peak period of the survey week, divided by the total number of vehicles in which those employees arrive.

ii. The average APO for two or more work locations in different target APO areas shall be calculated as:

$$\text{Average APO} = \frac{\text{Sum of Employee Miles}}{\text{Sum of Vehicle Miles}} \quad \text{Where:}$$

Employee Miles is: Total number of employees arriving at a participating location during the peak period of the survey week multiplied by the average commute distance of employees arriving at that location; and

Vehicle Miles is: Total number of passenger vehicles in which employees arrive at a participating location during the peak period of the survey week multiplied by the average commute distance of employees arriving at that location.

Both the number of affected employees and the average commute distance of affected employees at each participating location shall be determined from individual APO surveys conducted at each location.

To illustrate the calculation of average APO, the following example is provided:

	Employer "A"	Employer "B"
Employees Arriving	1,000	500
Vehicles Arriving	500	400
Average Distance	10 miles	20 miles

$$\text{Average APO} = \frac{(1{,}000 \text{ empl.} \times 10 \text{ mi.}) + (500 \text{ empl.} \times 20 \text{ mi.})}{(500 \text{ veh.} \times 10 \text{ mi.}) + (400 \text{ veh.} \times 20 \text{ mi.})}$$

$$\text{Average APO} = \frac{20{,}000 \text{ employee miles}}{13{,}000 \text{ vehicle miles}}$$

$$\text{Average APO} = 1.54$$

Each location participating in the consolidated plan or report shall be assigned the average APO as the APO for each individual location.

3. If participating work locations are in different target APO areas, the participating employers also shall average the target APOs. The average target APO shall be calculated as the sum over all participating employers of the target APO for each participating employer multiplied by the number of employees at that participating location, divided by the total number of employees at all participating locations.

4. An employer participating in a consolidated plan shall individually prepare a compliance plan for each participating work location, and shall individually implement its plan as if the employer had submitted an individual plan.

5. The consolidated plan shall include the individually prepared plan sections, as defined in (a)4 above, for each participating employer, accompanied by a jointly-prepared APO survey report, signed by the highest ranking responsible officer for each employer participating in the plan. The APO calculation shall present the results of the APO calculation as though the participating locations were one employer or one location.

16:50-8.8 Alternative plan preparers

An employer may contract with a transportation planning consultant, TMA or outside entity to prepare or assist in preparation of a compliance plan or report. The use of an outside entity for this purpose shall not, however, remove or reduce the responsibility of the employer with regard to any of the requirements of this chapter.

16:50-8.9 Requirement for an ETC

An affected employer shall designate an employee transportation coordinator (ETC) at each work location with 100 or more employees to administer the ECO program at that work location.

16:50-8.10 Document recordkeeping

(a) An affected employer shall maintain copies of all documents prepared or used in the document preparation by the employer or by other entities acting on behalf of the employer in accordance with these rules. These documents shall include, but not be limited to, documents related to:

1. Conduct of the APO survey;

2. Calculation of work location APO;

3. Preparation of compliance plans and reports;

4. Program implementation, including all organizational policies and procedures; and

5. Program monitoring and evaluation.

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(b) An affected employer shall maintain the documents set forth in (a) above in the office of the ETC for a period not less than five years from the date the documents were first generated.

SUBCHAPTER 9. PLAN CERTIFICATION

16:50-9.1 Selection and approval of certifiers

(a) Prior to submittal to the Department, compliance plans shall be certified as to accuracy and efficacy by a person approved by the Department as qualified to so certify plans. Notwithstanding this provision, an employer that submits a revised plan in accordance with N.J.A.C. 16:50-8 shall not be required to have the plan certified prior to its submittal to the Department. Certification shall be conducted in accordance with the following procedure:

1. The Department shall issue a request for qualifications (RFQ) for certifiers and select candidate certifiers from among certifier applicants. To be considered for selection as a candidate certifier by the Department, applicants must have a bachelor's degree from an accredited college or university, and four years of experience in transportation demand management, transportation planning, or related fields.

i. Applicants not possessing one of either the required minimum education or experience may substitute years of experience and years of education at the rate of two years of experience in the fields listed above, for one year of college education.

2. If the number of candidate certifiers that the Department can train and approve is constrained by the time constraints of the Act, the Department may select a lesser number of candidate certifiers, based on the amount and degree of experience in transportation demand management, from the applicants that meet the minimum qualifications.

3. Applicant certifiers may be independently employed or employed by an organization, but approval to certify shall be conferred only on individuals, not on organizations.

4. To be approved as certifiers, candidate certifiers must complete a training course developed and sponsored by the Department and must pass a proficiency examination at the completion of the course.

5. The Department shall certify certifiers for one-year, renewable periods. Approved certifiers shall sign and abide by a certifier's code of ethical conduct in certifying plans, including notifying the Department of any potential conflict of interest between themselves and an employer. The Department may deny renewal or may revoke the certifier's approval if the Department receives multiple complaints from employers regarding the certifier's conduct, fees or review of plans, or if a Department audit of a sample of plans reviewed by the certifier indicates the certifier has not followed the certification procedures and criteria set forth in this chapter. The certifier may appeal revocation of certification as provided for in N.J.A.C. 16:50-13.

16:50-9.2 Certification procedures

(a) The following procedure shall govern plan certification:

1. The Department shall provide to each affected employer, along with required compliance plan forms, a list of approved certifiers. Employers shall select a certifier from among those on the list and send prepared plans directly to the certifier of their choice for review. An employer shall choose a certifier who is independent of the employer. A certifier shall not be considered independent if:

i. The certifier is currently an employee of the employer or was employed by the employer within the past six months;

ii. The certifier or an organization that employs the certifier prepared and/or will assist the employer to implement the plan; or

iii. The certifier or any organization by which the certifier is employed is currently under contract to the employer to provide or receive payment for any product, professional service, or membership fee, or was under such contract within the past six months.

2. The certifier shall review the plan utilizing training from the Department and the criteria described in N.J.A.C. 16:50-9.3. The certifier may contact the employer to clarify questions related to the plan or to request reasonable additional documentation from the employer.

3. If the certifier deems the plan to meet the certification criteria, the certifier shall certify the plan and return it to the employer for submittal to the Department. Plans not meeting the certification criteria shall be returned to the employer with an explanation of the reasons the plan was returned, indication of the sections of the plan that are unacceptable, and guidance on additions or changes that the employer could consider to bring the plan into compliance. The employer shall revise its plan as appropriate and re-submit the revised plan to the same certifier as initially reviewed the plan.

4. It is the responsibility of an affected employer to allow adequate time for certification. Failure of the certifier to certify the employer's plan in time to allow submittal of the plan to the Department prior to the deadline shall not excuse the employer from this obligation. Notwithstanding this provision, however, an employer that submits a certifiable plan to a certifier at least 90 days prior to the plan submittal deadline shall not be considered in violation of the plan submittal deadline until 60 days after the scheduled submittal date to the Department.

16:50-9.3 Plan certification criteria

(a) In assessing whether a compliance plan can be certified, a certifier shall consider the following criteria:

1. The completeness of the plan and its consistency with the provisions of this chapter;

2. The accuracy of the work location APO computation.

3. The appropriateness of the commute alternatives proposed in the plan to the location and employee population;

4. The appropriateness of the ECO program services and incentives selected by the employer to the commute alternatives;

5. The likely effectiveness of the ECO strategies in producing the target APO by the scheduled deadline;

6. The ability of the proposed implementation schedule to ensure ECO strategies included in the plan are implemented in a timely and thorough manner; and

7. The ability of the proposed monitoring process to allow a timely and effective review of the employer's progress toward the target APO.

16:50-9.4 Certification fees

Notwithstanding any other provisions of this chapter, there is no prohibition against a certifier charging a fee for its services.

SUBCHAPTER 10. COMPLIANCE PLAN REVIEW

16:50-10.1 Plan review schedule

(a) Within 180 days of receipt of plans, the Department shall review all submitted plans for completeness and consistency with the provisions of this chapter and shall return incomplete and inconsistent plans to the employers for revisions. If a plan is returned to the employers, concurrently, the Department shall notify the appropriate certifier that the plan was returned and the reason(s) it was returned. An employer whose plan is returned shall have 60 days from the date of return to revise and resubmit the plan to the Department. The employer shall not be required to have the plan recertified prior to resubmittal to the Department. A plan not returned to the employer by the Department within 180 days of submittal shall be considered approved by the Department.

16:50-10.2 Plan review guidelines

(a) The Department shall review plans for completeness and consistency, using the following criteria:

1. The presence of all required plan sections and minimum plan requirements, as described in N.J.A.C. 16:50-8;

2. The presence of the correct filing fee, as established in N.J.A.C. 16:50-8;

3. The accuracy of the APO calculation, in accordance with the formula provided in N.J.A.C. 16:50-7; and

4. A demonstration of approval by a certifier, in accordance with the procedures defined in N.J.A.C. 16:50-9.

16:50-10.3 Additional review by Department of sample of plans

The Department shall select a portion of the affected employers' ECO programs reviewed and certified by each certifier for review

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and audit, in accordance with the criteria presented in N.J.A.C. 16:50-9 for plan review and certification.

SUBCHAPTER 11. ENFORCEMENT AND PENALTIES

16:50-11.1 Work location audits

To verify implementation of work location programs, the Department shall have the authority to conduct or cause to be conducted audits of an employer's affected location. The Department shall notify an employer selected for an audit not less than 24 hours in advance of the audit. The employer shall provide the Department access to all records pertaining to the development, implementation, and administration of the ECO program described in the employer's plan, and access to employees at the location.

16:50-11.2 Noncompliance

An affected employer shall be considered in noncompliance and subject to civil administrative penalties for violations of any provisions of this chapter. Upon determining that a violation has occurred, the Department shall issue the affected employer a notice of noncompliance that shall describe the violation, the actions required to correct the violation, the deadline by which the violation shall be corrected, and the penalty that shall be assessed for continued noncompliance. If the affected employer has not corrected the violation by the deadline specified in the notice of noncompliance, the Department shall have the authority to assess penalties in accordance with N.J.A.C. 16:50-11.3.

16:50-11.3 Penalties for noncompliance

(a) An affected employer found to be in noncompliance, as defined by N.J.A.C. 16:50-11.2, shall be subject to a penalty of not more than $250.00 for each violation, except as follows:

i. A penalty of not more than $250.00 per month for the first two months and not more than $500.00 per month thereafter for each work location for which an employer fails to submit a registration form as required by N.J.A.C. 16:50-6;

ii. A penalty of not more than $1,000 per month for each work location for which an employer fails to file a plan or report as required by N.J.A.C. 16:50-8; and

iii. A penalty of not more than $5,000 per month for each work location which fails to achieve the APO target required by N.J.A.C. 16:50-4.

(b) Each month of noncompliance with the provisions of this chapter shall be considered an additional, separate, and distinct offense. However, the Commissioner shall impose no initial penalties for a period of one year following the date of adoption of this rule, unless the employer has been notified in writing of the violation and the assessment of the penalty, been given a 30-day grace period from the date of the notice of violation to correct the violation, and failed during that time to comply. In addition to the penalties in (a) above, an employer filing a plan during the grace period shall be subject to a $100.00 late filing fee.

(c) An employer that fails to meet the target APO in 1996, but whose 1996 update plan is approved by the Department, shall not be subject to the $5,000 penalty for failure to meet the target APO until one year after the date by which the update plan is required to be filed. An employer that fails to meet the target APO in 1996 and who fails to submit an update plan or submits an update plan the Department does not approve, shall be subject to the penalty for failure to reach the target APO in accordance with the provisions of (b) above.

(d) The Commissioner may assess the above mentioned penalties at the Commissioner's discretion, taking into account the nature, seriousness, and circumstances of the violation, whether there is a pattern of noncompliance, and efforts that are being made by the employer to achieve compliance.

(e) A government employer failing to comply with any provision of this chapter shall, in the case of the State departments or agencies, receive a notice of violation addressed to the head of the department or agency. Upon receipt of the notice, the head of the department or agency shall consult with the Commissioner as to actions to be taken by the department or agency to comply with the provisions of this chapter. Failing appropriate action by the department or agency, the Commissioner may recommend to the Attorney General that action be taken to effect compliance as provided in a case of government employers other than State departments or agencies. In the case of government employers other than State departments or agencies, the department may request the Attorney General to institute civil proceedings in the Superior Court to enjoin the government employers to comply with the provisions of this chapter. The Court is authorized to impose fines for continued noncompliance in the same amount as the civil administrative penalties provided for in (a) above.

SUBCHAPTER 12. EXTENSIONS, EXEMPTIONS, AND WAIVERS

16:50-12.1 Deadline extensions

An employer that, for reasons beyond its control, is unable to meet a deadline established in this chapter may petition the Department for an extension of the deadline. All requests shall be submitted in writing and signed by the highest ranking responsible officer at the site. A request for an extension of the deadline to register as an affected employer shall be submitted not less than 30 days in advance of the deadline for registration. A request for extension of the deadline to submit a compliance plan or report shall be submitted not less than 90 days in advance of the deadline. The Department shall have 15 days from receipt of the request to rule on extensions of scheduled deadlines. Extensions may be considered for hardship circumstances or other unusual circumstances that may make it impossible to meet the deadlines established in this chapter.

16:50-12.2 Exemptions

(a) An employer that meets any of the criteria described in (a)1 and 2 below may apply to the Department for an exemption from the requirements of this chapter. Requests for exemptions shall be made in writing and shall be signed by the highest ranking responsible officer at the work location.

1. An employer that employs 100 or more employees at a single work location, but that has fewer than 33 employees arriving during the peak period; or

2. An employer that employs 100 or more employees at a single work location for fewer than six months of any 12 consecutive months.

16:50-12.3 Waivers

(a) Each affected employer is required to comply with all provisions of this chapter, including the requirement to achieve the target APO as specified in N.J.A.C. 16:50-4. However, an affected employer that would suffer extreme financial hardship in meeting the deadlines or reporting requirements established in this chapter, may petition the Department for a "hardship" waiver. A waiver may be requested to allow for a reduced compliance plan to be certified. In considering an employer's petition for a "hardship waiver," the Department may require the employer to produce documentation adequate to support the employer's claim of hardship. A hardship waiver shall not remove the requirement to achieve the target APO. An employer complying under the terms of an approved hardship waiver is still expected to implement its approved plan in "good faith." An affected employer may petition the Department for a hardship waiver in the same manner as provided for "good faith effort" waivers as established in this subchapter.

(b) An affected employer that has implemented an approved plan in "good faith," as defined in N.J.A.C. 16:50-12.5, but that has not achieved the target APO by November 1997, may petition the Department for a "good faith" waiver of the penalty for failure to achieve the target as follows:

1. A request for a waiver shall be made in writing and shall be signed by the highest ranking responsible officer at the work location. A request for a good faith waiver shall not be made sooner than November 15, 1996.

2. The Department shall grant or deny a request for a waiver within 60 days of receipt of such a request. If the employer so chooses, prior to the decision on the request, the Department shall forward the request to a ETRP Review Board, for its consideration. The ETR Review Board, consisting of seven members, the

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membership of which shall include one representative each from the Departments of Transportation, Environmental Protection and Energy, and Labor; two independent certifiers; and two affected employers, one each from an affected employer having between 100 and 500 employees, and an employer affected employer having more than 500 employees, selected and trained by the Department, shall review employers' requests for waivers and make a recommendation on disposition of the request to the Assistant Commissioner.

3. A waiver, when granted, shall be in effect for a one-year period. An employer desiring an extension of a waiver shall submit a subsequent request to the Department.

16:50-12.4 Application fees for extensions, exemptions and waivers

All requests for extensions, exemptions, and waivers shall be accompanied by an application of $250.00 per request.

16:50-12.5 Definition of "good faith effort"

(a) An affected employer shall develop and implement an ECOP in good faith at each affected location. In determining an employer's good faith, the Department shall first consider whether the employer implemented an approved plan in accordance with an approved implementation plan, but may consider any or all of the following additional criteria:

1. Did management at the location demonstrate significant commitment to implementation of the program and institute written employee policies that encouraged the use of commute alternatives?

2. Did the employer assess the transportation needs and interests of employees through employee surveys or other techniques?

3. Did the employer periodically review its progress toward the target APO, at a minimum through conduct of an APO survey of its employees in 1995, and through other actions designed to assess the continuing appropriateness of the employer's ECO program services and incentives?

4. If the employer's 1995 APO survey showed the APO increase was less than 50 percent of that needed to achieve the target APO, did the employer increase and/or modify its program to include appropriate contingency strategies?

5. Did the employer seek advice from a certifier, the Department, a TMA, a transportation consultant, or other entity with TDM experience, prior to November 1996, regarding desirable future actions to increase APO?

6. Did the ETC attend a Department-authorized ETC training course?

7. Did the APO at the work location increase a reasonable amount compared to other employers with similar work location characteristics and employee populations?

8. Did the employer consider, and utilize feasible, options for consolidated plans and APO averaging?

SUBCHAPTER 13. APPEALS

16:50-13.1 Requirements

(a) An employer that is found to be in noncompliance with any provision of this chapter and on which a penalty was assessed in accordance with this chapter shall have the opportunity to appeal such penalty in accordance with the procedures set forth in the New Jersey Administrative Procedures Act (NJAPA), N.J.S.A. 52:14B-1 et seq. An appeal shall be submitted to the Department in writing not later than 30 days after receipt of notification of the violation.

(b) A certifier whose approval to certify is revoked shall have the opportunity to appeal such revocation in accordance with the procedures set forth in the New Jersey Administrative Procedures Act (NJAPA). An appeal shall be submitted to the Department in writing not later than 30 days after receipt of notification of the revocation.

(c) The Department shall, if desired by the employer or the certifier, submit the request for appeal to the ETRP Review Board prior to its disposition through the procedures of the NJAPA. An employer or certifier is not required to utilize the Review Board, and may choose to appeal directly to the Commissioner through the NJAPA procedures. The Review Board, described in N.J.A.C. 16:50-12, shall make a recommendation to the Assistant Commissioner, Policy and Planning, if the Department, who shall rule on the request for appeal. If the ruling is not satisfactory to the employer or the certifier, the employer or the certifier may appeal the ruling of the Assistant Commissioner to the Commissioner through the NJAPA procedures. The decision of the Commissioner in such appeals shall be final.

(a)

NEW JERSEY TRANSIT CORPORATION
Section 16(b)(2) Capital Assistance Program
Proposed Readoption with Amendments: N.J.A.C. 16:80

Authorized By: New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.
Authority: N.J.S.A. 27:25-5(e), (g) and (h).
Proposal Number: PRN 1993-388.

Submit comments by August 18, 1993 to:
Albert R. Hasbrouck, III
Senior Director
Corporate Affairs
NJ TRANSIT Corporation
One Penn Plaza East
Newark, New Jersey 07105-2246

The agency proposal follows:

Summary

In accordance with the sunset provisions of Executive Order No. 66(1978), the New Jersey Transit Corporation (hereinafter "NJ TRANSIT") proposes to readopt N.J.A.C. 16:80, NJ TRANSIT's Section 16(b)(2) Capital Assistance Program.

Section (16)(b)(2) of the Federal Transit Act, 49 U.S.C. §§1601 et seq., as amended, authorizes the Secretary of Transportation to make grants and loans to private non-profit corporations and associations, public bodies approved by the State to coordinate services and/or public bodies which certify that no non-profit corporations or associations are readily available in an area for the specific purpose of assisting them in providing transportation services in meeting the special needs of elderly and persons with disabilities for whom mass transportation services are unavailable, insufficient, or inappropriate. The Section 16(b)(2) program is designed to supplement other capital assistance programs by funding transportation projects for the elderly and persons with disabilities in all areas—urbanized, small urban, and rural.

Chapter 80 is scheduled to expire on November 7, 1993. The provisions of Executive Order No. 66(1978) require that NJ TRANSIT review periodically its present rules to determine their continuing usefulness. Accordingly, NJ TRANSIT has reviewed its Section 16(b)(2) Capital Assistance Program and has determined the rules to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which it was originally promulgated. The amendments to the proposed readoption were made in order to make NJ TRANSIT's rules compatible with the recent minor changes in the Federal regulations governing the program.

The proposed amendments to the rules include:

1. Making public bodies, such as counties or municipalities, eligible to service a vehicle purchased with Section 16(b)(2) funds. Prior to the change only private non-profit organizations were eligible to receive vehicles.

2. Adding a definition of "public body";

3. Deleting the word "handicapped" throughout the rules and replacing it with the more appropriate words "persons with disabilities";

4. Deleting the title of the Urban Mass Transportation Administration and replacing it with the agency's new title the "Federal Transit Administration";

5. Reducing the State matching funds requirement to 10 percent from 20 percent for vehicle related equipment required by the Clean Air Act or the Americans with Disabilities Act; and

6. Expanding the eligible capital expenses to include equipment leases and the acquisition of transportation services under contract, lease or other arrangement.

N.J.A.C. 16:80 contains the rules governing the receipt and administration of funds available through the Section 16(b)(2) Capital Assistance Program. Specifically, subchapter 1 describes the purpose of and defini-

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tions used in the program. Subchapter 2 describes the allocation formula and fund availability. Subchapter 3 describes the eligible applicants, eligible capital expenses, eligible administrative costs and private enterprise coordination requirements. Subchapter 4 describes the application process. Subchapter 5 describes the lease agreements and reporting requirements.

Social Impact

The continued administration of Section 16(b)(2) Capital Assistance Program funds supports the planning, design, and implementation of mass transportation facilities, equipment, and services for the specific purpose of providing elderly and persons with disabilities with access to employment and post-secondary educational opportunities, non-emergency medical care, cultural and social activities, and commercial establishments.

Economic Impact

As a result of the 16(b)(2) program, NJ TRANSIT is eligible for approximately $1.4 million in Federal funding each fiscal year. Matching funds in the amount of approximately $350,000 are provided by NJ TRANSIT from the State of New Jersey's Transportation Trust Fund. The continued administration of Section 16(b)(2) Capital Assistance Program has no adverse financial impact for the elderly or persons with disabilities.

Regulatory Flexibility Analysis

The rules in this chapter may apply to small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in that it applies to those nonprofit organizations who apply and participate in the 16(b)(2) Capital Assistance Program. However, the recordkeeping and reporting requirements are minimal, consisting of a simple application and, if participating, a simple quarterly report. The nonprofit organizations have leasing agreements with the NJ TRANSIT and are bound by the terms of those agreements. No differing standards based on business size are deemed necessary. NJ TRANSIT ensures that private, for-profit transportation operators are given a fair and timely opportunity to participate in the local planning of the project. If a private operator objects to the projects the operator may submit a formal protest as described in N.J.A.C. 16:80-3.4.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:80.

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

16:80-1.1 Purpose

(a) Section 16(b)(2) of the [Urban Mass Transportation Act of 1964] **Federal Transit Act**, 49 U.S.C. §§1601 et seq., as amended, authorizes the Secretary of Transportation to make grants and loans to private non-profit corporations and associations, **public bodies approved by the State to coordinate services and/or public bodies which certify that no non-profit corporations or associations are readily available in an area** for the specific purpose of assisting them in providing transportation services **in** meeting the special needs of elderly and [handicapped] persons **with disabilities** for whom mass transportation services are unavailable, insufficient, or inappropriate. Such grants and loans are subject to such terms, conditions, requirements, and provisions as the Secretary of Transportation may deem necessary or appropriate.

(b) The Section 16(b)(2) program is designed to supplement other capital assistance programs by funding transportation projects for the elderly and [handicapped] **persons with disabilities** in all areas—urbanized, small urban, and rural. Although recipients are [private, non-profit] **often** organizations which [usually] have specific clientele, transportation services funded under this program may be open to all elderly and [handicapped] persons **with disabilities** once the immediate transportation needs of the recipients are satisfied.

(c) The principal responsibility and authority for administering the program is with the Governor through the New Jersey Transit Corporation (NJ TRANSIT), the designated State agency which acts as grantee for all Section 16(b)(2) funds within the State of New Jersey. NJ TRANSIT is responsible for:

i. Notifying [private non-profit] organizations of the availability of the program;

ii. Applying to the [Urban Mass Transportation Authority] **Federal Transit Administration** for these funds on behalf of private non-profit agencies **and public bodies** within the State;

iii.-vii. (No change.)

(d) Each eligible [private non-profit] organization shall apply directly to NJ TRANSIT for assistance under the program.

16:80-1.2 Definitions

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

"Applicant" means any private non-profit organization **or certified public body** which applies for financial assistance under the Section 16(b)(2) Capital Assistance Program.

. . .

["Handicapped person" means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including any person who uses a wheelchair or has semi-ambulatory capabilities, is unable without special facilities to utilize public transportation facilities and services effectively.]

. . .

"Person with disability" means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including any person who uses a wheelchair or has semi-ambulatory capabilities, is unable without special facilities to utilize public transportation facilities and services effectively.

. . .

"Public body" means a county, municipality or other public organization or association which has been approved by the State to coordinate services for elderly persons and persons with disabilities or has itself certified that non-profit corporation or association is not readily available in a service area.

. . .

16:80-2.1 General

Section 16(b)(2) funds are allocated among the States by an administrative formula which is based on the percentage of elderly and [handicapped] **persons with disabilities** population in each State. The annual fiscal year funding level for each State is [announced in a letter from the Administrator of the Urban Mass Transportation Administration to the governor] **published in the Federal Register following the enactment of the annual United States Department of Transportation Appropriations Act.** Notification of the fiscal year allocations are made on or about October 1. **Section 16 funds are available to the States only for the fiscal year in which they are apportioned. Any funds remaining unobligated at the end of the fiscal year are reapportioned with the next year's apportionment to all States.**

16:80-2.2 Formula

(a) The Federal share of eligible capital and program administrative costs is not to exceed 80 percent of the net cost of the program. The local match of eligible capital and administrative costs shall be no less than 20 percent of the net cost of the program. **Subject to the availability of funds,** NJ TRANSIT provides the 20 percent match requirement for New Jersey's Section 16(b)(2) Program.

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

(d) The Federal share can be 90 percent for vehicle related equipment required by the Clean Air Act Amendments of 1990 or the Americans with Disabilities Act of 1990. It is only the incremental cost of the equipment required that may be funded at 90 percent, not the entire cost of the vehicle.

16:80-3.1 Eligibility applicants

[Only private] **Private** non-profit organizations **and designated public bodies** are eligible to apply to NJ TRANSIT for funding under the Section 16(b)(2) program.

16:80-3.2 Eligible capital expenses

(a) Funds for the Section 16(b)(2) program are available for capital expenses to support the provision of transportation services

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to meet the special needs of elderly and [handicapped] persons **with disabilities**. Examples of capital expenses include, but are not limited to, the following:

1.-8. (No change.)

9. Initial installation costs; [and]

10. Vehicle procurement, testing, inspection, and acceptance costs[.];

11. Lease of equipment when lease is more cost effective than purchase; and

12. Acquisition of transportation services under contract, lease, or other arrangement. The State, as recipient, has the option to decide whether to provide funding for such acquired services.

16:80-3.3 Eligible NJ TRANSIT administrative expenses

(a) Eligible program administration costs consist of those costs incurred in implementing and managing the entire Section 16(b)(2) program, including previously funded projects, if necessary.

(b) Eligible program administration costs include[d], but are not limited to:

1. General, administrative, and overhead costs such as salaries of the program director, **manager,** secretary and bookkeeper;

2.-3. (No change.)

16:80-3.4 Private enterprise coordination requirements

(a) To the maximum extent feasible, NJ TRANSIT shall ensure that private-for-profit mass transportation operators have been given a fair and timely opportunity to participate in the local planning for the project, and have been afforded every feasible opportunity to provide the proposed special service for elderly and [handicapped] persons **with disabilities**. To ensure that all private-for-profit and public transit operators have been notified of the non-profit organization's intention to provide special services, and that they have had adequate opportunity to comment, two options are available:

1. The [private non-profit] applicant should have a public notice describing the services it intends to offer to meet the special needs of elderly and [handicapped] persons **with disabilities** within a stated service area. The notice should invite any interested public or private-for-profit transit or paratransit operators within the stated service area to comment on the proposed service by sending a written notice to NJ TRANSIT and/or the local applicant. A minimum of 15 days response time shall be provided; or

2. The [non-profit] applicant should request individual sign-offs from public or private-for-profit transit and paratransit operators in the service area stating that the services that the private-for-profit operator is providing or is prepared to provide are not designed to meet the special needs of elderly and [handicapped] persons **with disabilities** within the service area.

16:80-4.1 Program advertisement

NJ TRANSIT shall advertise the program early enough to allow sufficient time for any interested[, private, non-profit corporation] **applicant** to obtain, complete, and return the preliminary application before an established deadline. The program shall be advertised by means of a local notice in three or more newspapers of general circulation published in New Jersey.

16:80-4.2 Preliminary application

(a) The preliminary application must be obtained from and submitted to:

The Section 16(b)(2) Program
NJ TRANSIT
c/o Office of Special Services
[P.O. Box 10009]
One Penn Plaza East
Newark, NJ [07101] **07105-2246**

(b) The [private non-profit corporation] **applicant** shall submit the following information in the completion of the preliminary application:

1.-7. (No change.)

16:80-4.3 County coordinating committee review

(a) If a county has not been designated by NJ TRANSIT as a public body eligible to apply, then the county will be given an opportunity to review all applications received from within that particular county.

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

(d) If a county wants to apply and has been designated by NJ TRANSIT as an eligible applicant, then the county forfeits the opportunity to participate in the review process. In such cases, applications will be reviewed directly by NJ TRANSIT.

16:80-4.5 Selection of final applications

(a) NJ TRANSIT evaluates and selects the final applications to be used based on the following criteria approved by the [Urban Mass Transportation Administration] **Federal Transit Administration**:

1.-2. (No change.)

3. The degree of coordination among applicant organizations submitting a proposal in attempting to provide transportation services to elderly and/or [handicapped people] **persons with disabilities**; and

4. (No change.)

(b) NJ TRANSIT will [then] submit a final program of projects listing the names of agencies completing applications to the capital assistance branch of the [Urban Mass Transportation Administration] **Federal Transit Administration**.

(c) NJ TRANSIT will notify each county of the agency or organization within that county whose application has been selected to be included in the grant application NJ TRANSIT submits to the [Urban Mass Transportation] **Federal Transit Administration**.

16:80-4.6 Notification of grant award

NJ TRANSIT will notify the governing body of each county once it receives notification **from** the [Urban Mass Transportation Administration] **Federal Transit Administration** of **the** grant award. [The county will then notify the local agencies or organization of the funding availability.]

16:80-5.1 Lease agreements

(a) After program approval **and purchase of vehicle equipment**, NJ TRANSIT will enter into a lease agreement with the selected [private, non-profit corporations] **recipients** for the purposes of leasing vehicles.

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

(a)

NEW JERSEY TRANSIT CORPORATION

Small Urban and Rural Area Public Transportation Program

Proposed Readoption with Amendments: N.J.A.C. 16:81

Authorized By: New Jersey Transit Corporation,
Shirley A. DeLibero, Executive Director.
Authority: N.J.S.A. 27:25-5(e), (g) and (h).
Proposal Number: PRN 1993-389.

Submit comments by August 18, 1993 to:
Albert R. Hasbrouck, III
Senior Director
Corporate Affairs
NJ TRANSIT Corporation
One Penn Plaza East
Newark, New Jersey 07105-2246

The agency proposal follows:

Summary

In accordance with the sunset provisions of Executive Order No. 66(1978), the New Jersey Transit Corporation (hereinafter "NJ TRANSIT") proposes to readopt N.J.A.C. 16:81, NJ TRANSIT's Small Urban and Rural Area Public Transportation Program.

Section 18 of the Federal Transit Act, 49 U.S.C. §§1601 et seq., as amended, authorizes the Secretary of Transportation to apportion funds to the Governor of each state for public transportation projects in non-urbanized areas. Section 18 program funds may be used for planning, capital, operating, and administrative assistance to state agencies, local public bodies, nonprofit organizations, Indian tribes and groups, and operators of public transit services.

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Chapter 81 is scheduled to expire on November 7, 1993. The provisions of Executive Order No. 66(1978) require that NJ TRANSIT review periodically its present rules to determine their continuing usefulness. Accordingly, NJ TRANSIT has reviewed its Small Urban and Rural Area Public Transportation Program and has determined the rules to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. The amendments to the proposed readoption were made in order to make NJ TRANSIT's rules compatible with the recent changes in the Federal regulations governing the program.

The proposed amendments to the rules include:

1. Deleting the title of the "Urban Mass Transportation Administration" and replacing it with the agency's new title the "Federal Transit Administration";

2. Expanding the obligation period for Section 18 funds from two to three years;

3. Expanding the definitions of eligible capital expenses to include facilities to provide access for bicycles to mass transit facilities and vehicles and the lease of equipment and facilities;

4. Expanding the eligible administrative expenses to include office supplies and standard overhead rates;

5. A new requirement that a portion of the Section 18 funds be set aside for the development and support of intercity bus transportation. This requirement is effective unless the Governor certifies that the intercity bus service needs of the State are being adequately met; and

6. The Rural Transit Assistance Program (RTAP) which provides Federal funds with no state matching requirement to fund grants and contracts for transit research, technical assistance, training and selected support services designed to meet the specific needs of transit operators in non-urbanized areas.

N.J.A.C. 16:81 contains the rules governing the receipt and administration of funds available through the Small Urban and Rural Area Public Transportation Program. Specifically, subchapter 1 describes the general provisions of the Small Urban and Rural Area Public Transportation Program and includes purpose and definitions. Subchapter 2 describes the formula and availability of funds. Subchapter 3 describes the local recipients and eligible services and areas. Subchapter 4 describes the eligible assistance categories. Subchapter 5 describes the application process. Subchapter 6 describes the notification process. Subchapter 7 describes the Rural Transit Assistance Program.

Social Impact

The continued administration of funds available through the Section 18 Small Urban and Rural Area Public Transportation Program assists in the development, maintenance, improvement, coordination, and use of public transportation systems in rural and small urban areas in order to enhance the access of people in such areas to health care, shopping, education, employment, public services and recreation.

Economic Impact

The administration of Section 18 funds has no adverse economic impact upon users within the target areas. By providing public transportation in areas which otherwise could not or traditionally have not supported public transportation, it may indirectly be possible for increased support of local businesses and activities by providing better access to such businesses and activities. The establishment of local transportation systems in small urban and rural areas has created jobs and in some cases impacted positively on transportation-related businesses such as gas stations, auto part stores and repair shops.

As a result of the Section 18 program, NJ TRANSIT is eligible for approximately $1.9 million in Federal funding each fiscal year. Matching funds in the amount of approximately $1.7 million are provided by NJ TRANSIT and the various local recipients. For the RTAP program, the Federal government provides approximately $70,000 annually and no state match is required.

Regulatory Flexibility Analysis

The rules in this chapter may apply to small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in that they apply to those nonprofit organizations who apply and participate in the Small Urban and Rural Area Public Transportation Program as well as some for profit businesses that contract with NJ TRANSIT in order to provide certain transportation services. However, the rules effecting these entities are minimal existing only as a simple application process. In the instance of private for profit businesses, the contracts with NJ TRANSIT spell out the conditions. No differing standards based on business size are seen as necessary.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:81.

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

16:81-1.1 Purpose

(a) Section 18 of the [Urban Mass Transportation Act of 1964] **Federal Transit Act**, 49 U.S.C. §§1601 et seq., as amended, authorizes the Secretary of Transportation to apportion funds to the Governor of each State for public transportation projects in non-urbanized areas.

(b) The funds, appropriated annually, are made available on population-based formulas and may be used for all projects included in the Section 18 Statewide program of projects submitted annually for approval to the [Urban Mass Transportation] **Federal Transit** Administration by NJ TRANSIT.

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

(e) The principal responsibility and authority for administering the program is with NJ TRANSIT, the State agency designated as the grantee for all Section 18 funds within the State of New Jersey. NJ TRANSIT is responsible for:

1.-4. (No change.)

5. Submitting a Statewide program of projects to the [Urban Mass Transportation] **Federal Transit** Administration for approval;

6.-11. (No change.)

16:81-2.3 Fund availability

Section 18 funds are available for obligation for [two] **three** years, [after] the fiscal year [for which they were] apportioned **plus two additional years**. Funds unobligated at the end of the [two] **three** -year period will lapse to the State unless they are obligated for Section 18 projects or transferred to the Section 9 program to be obligated that year in areas having a population of between 50,000 and 200,000. Unobligated funds which have lapsed will be reapportioned among the States according to formula.

16:81-3.1 Local recipients

Eligible recipients include local public bodies and agencies thereof, private non-profit organizations, Indian tribes and groups, and operators of public transportation services. Private, for-profit operators of transit or paratransit services may participate in the program through contracts with [NJ TRANSIT] **eligible recipients**. NJ TRANSIT may further define recipient eligibility requirements in order to comply with State laws or to further program goals.

16:81-3.2 Eligible services and areas

(a) Section 18 funds are available for expenditures for public transportation projects in areas other than urbanized areas. Public transportation is defined to mean mass transportation by bus, rail, or other conveyance, either publicly or privately owned, which provides [service to] the [general] public **general or special service on a regular and continuing basis** (not including charter or sightseeing or exclusive school bus) [on a regular and continuing basis].

(b) (No change.)

16:81-4.2 Capital expenses

(a) Capital expenses include the acquisition, construction and improvement of public transit facilities and equipment needed for an efficient and coordinated public transportation system. The Federal share of eligible facilities and equipment shall not exceed 80 percent of the net capital cost. Examples of eligible capital expenditures include, but are not limited to, the following:

1.-9. (No change.)

10. Vehicle procurement, testing, inspection and acceptance costs; [and]

11. Construction or rehabilitation of transit facilities including design, engineering and land acquisition[.];

12. Facilities to provide access for bicycles to mass transit facilities or equipment for transporting bicycles on vehicles; and

13. Lease of equipment/facilities when more cost effective as well as the capital cost of contracting.

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16:81-4.4 Project administrative expenses

(a) Under the Section 18 program, project administrative expenses incurred by a local recipient can be viewed as a separate cost category from either capital or operating expenses. **NJ TRANSIT has determined such expenses to be capital.**

(b) Eligible project administrative costs may include, but are not limited to, general, administrative and overhead costs such as:

1.-2. (No change.)

3. Insurance; [and]

4. Marketing[.]**;**

5. Office supplies; and

6. Standard overhead rates.

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

16:81-4.5 Intercity bus service

States are required to spend a portion of their Section 18 apportionment to carry out a program for the development and support of intercity bus transportation. The percentage required by the statute is phased in from not less than five percent in FY1992 and not less than 10 percent in FY1993, to not less than 15 percent in FY1994 and thereafter. The requirement is effective unless the Governor certifies that the intercity bus service needs of the State are being adequately met.

16:81-5.1 Application process

(a) The application package for Section 18 eligible recipients shall be obtained from, and returned to:

The Section 18 Program
NJ TRANSIT
c/o Office of Special Services
[P.O. Box 10009]
One Penn Plaza East
Newark, NJ [07101] **07105-2246**

(b) Each local recipient of Section 18 funds shall submit the application to NJ TRANSIT for funds apportioned to the State of New Jersey during the current fiscal year. The application shall be complete and have [appropriate] authorizing signatures where appropriate.

(c) (No change.)

16:81-6.1 Notification process

(a) NJ TRANSIT will notify applicants of the selection of their projects to be included in the application to be submitted to the [Urban Mass Transportation] **Federal Transit** Administration once the NJ TRANSIT Board of Directors has reviewed and approved the Section 18 program of projects.

(b) (No change.)

SUBCHAPTER 7. RURAL TRANSIT ASSISTANCE PROGRAM (RTAP)

16:81-7.1 Purpose

(a) Section 18(h) of the Federal Transit Act, as amended, authorizes the Secretary to make grants and enter into direct contracts for transit research, technical assistance, training and related support services in non-urbanized areas. The Rural Transit Assistance Program (RTAP) provides a source of funding to assist in the design and implementation of training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in non-urbanized areas. The program has two components. The State program provides an annual allocation to each State to develop and implement training and technical assistance programs in conjunction with the State's administration of the Section 18 formula assistance program. The national program provides for the development of information and materials for use by local operators and State administering agencies and supports research and technical assistance projects of national interest.

(b) The objectives of the Rural Transit Assistance Program are:

1. To promote the safe and effective delivery of public transportation in non-urbanized areas and to make more efficient use of public and private resources;

2. To foster the development of State and local capacity for addressing the training and technical assistance needs of rural/small urban transportation community;

3. To improve the quality of information and technical assistance available through the development of training and technical assistance resource materials;

4. To facilitate peer-to-peer self help through the development of local networks of transit professionals;

5. To support the coordination of public, private, specialized, and human service transportation services; and

6. To build a national data base on the non-urbanized segment of the public transportation industry.

16:81-7.2 Authorization

Funding for RTAP is authorized at the level of five percent of the three percent of Federal Transit Administration's formula and discretionary funds which are set aside for planning, programming, and research. This provides a stable funding source proportionate to other Federal Transit Administration program.

16:81-7.3 RTAP formula

Federal Transit Administration allocates RTAP funds to the States based on an administrative formula. A base level of funds is allocated first ($50,000 for each of the States and Puerto Rico, and $10,000 for the Insular Areas of Guam, American Samoa, Northern Marianas, and the Virgin Islands). The remaining funds are distributed according to the non-urbanized population based formula used for the apportionment of Section 18 funds. Allocations are announced in the Federal Register along with the annual Section 18 apportionments. The RTAP national program is funded from other Federal Transit Administration sources.

16:81-7.4 Funds availability

RTAP funds have the same period of availability as the Section 18 formula funds. That is, RTAP funds are available to the State for obligation during the fiscal year in which they are allocated plus two additional fiscal years. If not obligated during this period, they are reallocated among all the States with the following fiscal year's allocation. There is no Federal requirement for a local match for the RTAP funds.

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RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Construction Permits—Application
Prototype Plan Review

Adopted Amendments: N.J.A.C. 5:23-1.6, 2.15 and 4.18

Proposed: April 19, 1993 at 25 N.J.R. 1629(a).
Adopted: June 15, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.
Filed: June 18, 1993 as R.1993 d.353, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.2).

Authority: N.J.S.A. 52:27D-124.

Effective Date: July 19, 1993.
Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:
A comment was received from Joseph Riggs, President of the New Jersey Builders Association (NJBA).

COMMENT: The NJBA supports the proposal and believes that it will clarify prototype plan review and permit processing procedures for applicants and code officials alike. Redundancies in the permit process will be removed, with resulting reductions in costs for prospective home owners. NJBA recommends, however, that language be added to make it clear that the schematic or sketch plan need not be signed and sealed by a registered architect or licensed professional engineer.

RESPONSE: The schematic or sketch plan is not a construction copy of a plan and therefore does not have to be sealed by an engineer or architect. The text is being amended to make this clear.

Summary of Agency-Initiated Changes:
In the course of internal review, the Department noted an inconsistency between N.J.A.C. 5:23-1.6, which provides for the approval of plans submitted under the prior code for up to six months after the effective date of adoption of a code revision and the proposed amendment to N.J.A.C. 5:23-2.15(e)3iii, which would have allowed use of the prior code "for 36 months or until adoption of the next edition of the code, as set forth in N.J.A.C. 5:23-1.6(b)." The text has been revised on adoption to conform to what N.J.A.C. 5:23-1.6(b) actually provides.

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

5:23-1.6 Prior permit; transitional rules for public school facilities
(a) (No change.)
(b) In the case of *[projects]* ***a project*** for which a permit has not been issued on the effective date of any code revision, and for which plans *[were]* ***are*** submitted based upon drawings and specifications prepared in conformance to the code in force immediately prior to the effective date of the code revision, the construction official shall, upon request of the applicant, for a period of six months after the effective date of the code revision, issue a permit to construct such project pursuant to the code in force immediately prior to the effective date of the code revision.
(c) (No change.)

5:23-2.15 Construction permits-application
(a)-(d) (No change.)
(e) Plans, plan review, plan approval:
1.-2. (No change.)
3. Plan review:
i. Department or other State agency review: When a review and release of plans by the Department or other State agency designated by the Department pursuant to N.J.A.C. 5:23-3 is required, the owner or agent of the owner shall file an application for construction plan release for each project, along with three sets of plans, specifications and such other supporting information as the Department or other designated reviewing agency may require on forms obtained from the Department or such reviewing agency. The plans, specifications and other supporting information shall conform to the requirements of (e) above.
(1)-(3) (No change.)
(4) Prototype or master plan filing: Designs repeatedly used at different locations may be designated as "prototype or master plans" and filed as follows: On initial application, one additional complete set of repeated portions of the project, with as many variations as can be shown on the plans, may be submitted along with a request for prototype or master plan filing. Subsequent submittals shall consist of at least a plot plan which is signed and sealed by a registered architect or licensed professional engineer, including utilities, exterior elevations of the specific building, and the prototype or master plan file identification number. In addition, a schematic or sketch plan that clearly shows the floor plan arrangement, and any necessary mechanical, electrical and plumbing information not clearly shown in the prototype plan or on the subcode sections, must be submitted.
(5) (No change.)
ii. Local enforcing agency plan review: Where a Department or other State plan review is not required by the regulations, an applicant for a construction permit shall be deemed to have applied for a local enforcing agency plan review by filing an application for a construction permit.
(1) (No change.)
(2) Where a design is used repeatedly at different locations, the plans attached to the first application for the construction permit may be designated as a "prototype or master plan". These plans may include as many variations as can be shown. Subsequent submittals shall consist of a plot plan which is signed and sealed by a registered architect or professional engineer, including utilities, exterior elevations, and a reference to the prototype plan by application or permit number. In addition, a schematic or sketch plan that clearly shows the floor plan arrangement, and any necessary mechanical, electrical and plumbing information not clearly shown in the prototype plan or on the subcode sections, must be submitted;
iii. Validity of plan release or prototype approval: The released plans or prototype approval (Department or local) shall be valid for the purposes of applying for a construction permit *[for 36 months or]* until ***six months after the date of*** adoption of the next edition of the code, as set forth in N.J.A.C. 5:23-1.6(b).
iv.-vi. (No change.)
vii. A schematic or sketch plan, when required pursuant to this subsection, shall not be deemed to be a construction copy of a plan and shall therefore not be required to be signed or sealed by a registered architect or licensed professional engineer.

5:23-4.18 Standards for Municipal Fees
(a) (No change.)
(b) Plan review fees:
1.-2. (No change.)
3. If a muncipality has not established a plan review fee by ordinance, 20 percent of the construction permit fee shall be designated as the plan review fee for prototype plans, in accordance with N.J.A.C. 5:23-2.26.
(c)-(k) (No change.)

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(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Note Incentive Purchase Program

Adopted New Rules: N.J.A.C. 5:80-23

Proposed: May 3, 1993 at 25 N.J.R. 1847(a).

Adopted: June 24, 1993 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director/Secretary.

Filed: June 28, 1993 as R.1993 d.370, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:14K-5s and 12a.

Effective Date: July 19, 1993.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received from John Eickman, Sr. V.P., Summit Trust Co. The commenter questioned whether the credit criteria to be used by the Agency would be sufficient to prevent an increased risk on the draw of monies from the Fund.

RESPONSE: The Agency's rules set forth the credit criteria which will be used in accepting applications for participation in the program. The Agency's credit criteria are consistent with industry standards which have historically proven to minimize the risk of loss on such loans which would result in the draw of monies from the Fund.

Summary of Agency-Initiated Changes:

N.J.A.C. 5:80-23.1 Definitions

The definition of purchase price was expanded to more clearly identify how it is to be calculated.

The definition of undivided interest was modified to eliminate a possible inconsistency with the rules in the subchapter. The intention behind the rules is for the Agency to take the risk for the first 30 percent of a loan in default. The definition's use of the term "ratable" share could have caused confusion as to whether the Agency's risk was the first 30 percent or in proportion to the qualified lender. The changes made should eliminate any such confusion.

N.J.A.C. 5:80-23.4(c)

This section was modified to identify other sources of money which would be deposited into the Fund.

At N.J.A.C. 5:80-23.5(b) a cross reference to the provisions of the application contents at N.J.A.C. 5:80-23.6(b) has been added in order to clarify that meeting these requirements is also necessary for the Agency to enter into a housing incentive note purchase agreement.

At N.J.A.C. 5:80-23.6(b)2., the reference to the use of an American Institute of Architect (AIA) appraiser has been changed because the reference is in error as the AIA does not certify appraisers.

Other technical changes were made at N.J.A.C. 5:80-23.4(e), and 23.7(a) and (b)3 to clarify provisions of the rules.

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

SUBCHAPTER 23. HOUSING INCENTIVE NOTE PURCHASE PROGRAM

5:80-23.1 Authority

The rules in this subchapter are promulgated under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting P.L. 1983, c.530, N.J.S.A. 55:14K-1 et seq.; specifically N.J.S.A. 55:14K-12a and 14K-5(s).

5:80-23.2 Purpose

This subchapter is established to assist the Agency in helping to create incentives for lenders and developers to make available and continue to provide a base of affordable housing stock of owner occupied residential units in the State of New Jersey, as contemplated by N.J.S.A. 55:14K-12a and 14K-5(s).

5:80-23.3 Definitions

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

"Available note purchase commitment" means at the time of entering into any housing incentive note purchase agreement an amount equal to the product of x times y, where x = 3 and y = the amount then on deposit to the credit of the Fund less all amounts then required as determined as of the end of the most recent calendar quarter by the Agency to be paid out of the Fund pursuant to properly made demands for purchase of undivided interests under existing Housing Incentive Note Purchase Agreements and less (but without duplication) the amount of any undivided interest already subject to purchase with respect to any residential project loan as to which there is an existing default for the payment of principal or interest which is over 90 days past due (whether or not a demand for purchase has been made).

"Eligible project" means any residential project which:

1. Is located entirely within the geographic boundaries of the State of New Jersey; and

2. Otherwise meets the requirements of the Agency which shall include the qualifications of the developer applying for a housing incentive note purchase agreement and the environmental and other characteristics of the real property comprising the residential project.

"Fund means the Housing Incentive Note Purchase Fund established pursuant to N.J.A.C. 5:80-23.4.

"Housing incentive note purchase agreement" or "HINPA" means any note purchase agreement entered into by the Agency pursuant to this subchapter in which the Agency agrees, subject to the terms and conditions set forth therein, to purchase an undivided interest.

"Person" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Qualified lender" means any person resident in, established under the laws of, or qualified to do business as a foreign corporation or other entity in, the State of New Jersey and which person is in the business of making real estate loans, has the corporate or other power to, and is authorized to conduct such business in, the State of New Jersey, and has a credit status satisfactory to the Agency.

"Purchase price" means the dollar amount, payable by the Agency to a qualified lender to acquire an undivided interest pursuant to and as adjusted by the terms of the relevant HINPA, as determined on the date of purchase. ***The purchase price shall be an amount equal to the lesser of:**

1. A stated dollar amount; or

2. The product of x times y, where x = the undivided interest and y = the outstanding principal amount of the relevant loan on the date of purchase.*

"Residential project" means any development, the purpose of which is to create one or more residential structures for owner occupancy whether in the form of detached units or attached units for separate occupancy together with any land, infrastructure, roads, sewer, structures, facilities or other improvements, appurtenant or ancillary thereto. "Residential project" includes any partially or wholly completed development which would have constituted a "residential project" at inception and which has been abandoned or foreclosed or is subject to a foreclosure, bankruptcy, insolvency or like proceeding.

"Undivided interest" means the Agency's *[ratable]* ***undivided*** share of any eligible project and the right, title and interest of the qualified lender in, to and under the related loan documents and collateral*[; such ratable share being equal to the percentage obtained by dividing the purchase price by the outstanding principal amount of such loan on the date of purchase thereof (excluding from the calculation of said principal any accrued or capitalized interest)]*.

5:80-23.4 Housing Incentive Note Purchase Fund

(a) There is hereby established within the funds maintained by the Agency a fund to be known as the "Housing Incentive Note Purchase Fund."

(b) There shall, on *[the effective date of these rules]* ***July 19, 1993***, be deposited in the Fund the amount of $10,000,000 from

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funds available to the Agency and previously designated for this purpose.

(c) There shall also be deposited in the Fund *[all]*

1. All income earned on the monies deposited therein *[and all]*

***2. All HINPA fees received pursuant to N.J.A.C. 5:80-23.9(a);**

3. All monies received by the Agency in respect of the undivided interests whether denominated as principal, interest or otherwise but excluding the fees received pursuant to N.J.A.C. 5:80-23.9(b) and (c), and

4. All* other monies designated from time to time by the agency for deposit in the Fund.

(d) Monies on deposit in the Fund may be invested and reinvested by the Agency in the same manner in which other funds of the Agency may be invested.

(e) Monies on deposit in the Fund may be withdrawn:

1. To fund the payment of the purchase price of undivided interests pursuant to housing incentive note purchase agreements;

2. To cure, at the option of the Agency, payment defaults by developers as***, and if,*** contemplated by the respective housing incentive note purchase agreements; and

3. To liquidate the Fund upon payment in full or the provision of payment in full of all existing and contingent obligations of the Agency under housing incentive note purchase agreements existing at the time of liquidation of the Fund.

5:80-23.5 Authority to enter into housing incentive note purchase agreements

(a) Each housing incentive note purchase agreement entered into pursuant to this subchapter shall be a limited recourse purchase obligation of the Agency payable solely from monies available in the Fund and from no other fund or source of monies and shall not be a general obligation of the Agency. In the event there are insufficient monies in the Fund to pay the aggregate purchase price of all undivided interests under outstanding housing incentive note purchase agreements, such purchases shall be made pro rata based upon the ratio which the purchase price under each HINPA bears to the aggregate purchase price of all undivided interests with respect to which a demand for purchase has been received by the Agency.

(b) The Agency may enter into a housing incentive note purchase agreement for any eligible project pursuant to which the Agency agrees to purchase an undivided interest for a purchase price not exceeding $2,000,000 provided that the dollar amount of the purchase price to be paid by the Agency pursuant to such housing incentive note purchase agreement with respect to an eligible project, when added to the aggregate purchase price payable by the Agency pursuant to existing housing incentive note purchase agreements (whether or not a demand for purchase has been made), does not exceed the then available note purchase commitment ***and provided further that the provisions at N.J.A.C. 5:80-23.6(b) are met***. In determining whether the foregoing limits for a housing incentive note purchase agreement proposed to be entered into with respect to any eligible project are met, the Agency need not consider as an aggregate, separate eligible projects undertaken by the same person or such person's affiliates as one project, unless they are, in the judgment of the Agency, subdivisions of the same residential project, physically contiguous or located within the same municipality.

(c) In the event that the available note purchase commitment at any time is insufficient to meet the applications for financial support of the Agency in the form of requested housing incentive note purchase agreements, the Agency may prioritize requests for housing incentive note purchase agreements in its sole discretion, taking into consideration the goals of this program, together with the creditworthiness of the respective residential project, the location of existing eligible projects and the location of the proposed residential project, the readiness of the developer to proceed, the experience of the developer, and the marketability of the residential project.

5:80-23.6 Applications

(a) An application for a housing incentive note purchase agreement for a residential project shall be made by the proposed developer in writing to the Agency.

(b) Such application shall set forth the ***following:**

1. The* amount of the requested commitment to purchase an undivided interest pursuant to a housing incentive note purchase agreement, the amount of the loan, ***and*** the name of the lender *[and shall be accompanied by:]*

*[1.]***2.*** A description of the residential project (including the status thereof, for example, whether fully or partially completed, in foreclosure, ground not yet broken) together with an appraisal, not more than six months old, of the residential project by *[an American Institute of Architects (AIA)]* ***a New Jersey certified general real estate*** appraiser, a title report not more than six months old, a site plan, a survey by a licensed surveyor, a copy of applicable zoning ordinances, and the status of utilities, roads and existing financing, if any, relating to the residential project;

*[2.]***3.*** A description of the developer, including a description of all real estate projects undertaken by the developer for the five years prior to the application, outstanding judgments against the developer and pending litigation involving the developer, if any, the type of person (for example, whether a corporation, limited or general partnership, or joint venture), list of all existing and proposed owners of equity in the developer and the residential project, and the most recent financial statements of the developer;

*[3.]***4.*** A description of the proposed financing for the residential project, including the name of the lender, any term sheets or commitment letters which have been provided to the developer and any draft documentation relating thereto;

*[4.]***5.*** If the lender is not a bank or other financial institution having one of the three highest investment grade ratings issued by Standard and Poor's Corporation or Moody's Investors Service, Inc., the application shall be accompanied by the most recent annual report of such lender;

*[5.]***6.*** An analysis of the cost to complete the residential project, together with a tabulation of the source and use of funds necessary to meet such costs; and

*[6.]***7.*** *[Including, without limitation, any]* ***Any*** other documents or information (such as, but without limitation, environmental audits) the Agency deems necessary or appropriate to determine whether the residential project is an eligible project.

5:80-23.7 Housing incentive note purchase commitment and requirements

(a) The Agency may issue to the developer of a residential project which is determiend by the Agency to be an eligible project, a commitment to enter into a housing incentive note purchase agreement, only upon the approval of the *[Board]* ***members*** of the Agency after a review of the application delivered by the developer and such other information as the Agency may request from the developer and any qualified lender. Such commitment to enter into a housing incentive note purchase agreement shall contain such conditions precedent and other terms as the Agency shall deem appropriate. The *[Board]* ***members*** of the Agency may delegate to any officer of the Agency the authority to execute and deliver a housing incentive note purchase agreement pursuant to a commitment upon a determination by such officer that all conditions precedent and other terms of such commitment have been satisfied.

(b) Each commitment to issue a housing incentive note purchase agreement shall require that:

1. All documents relating to an eligible project shall be in form and substance satisfactory to the Agency;

2. All mortgages of an eligible project securing repayment of the financing thereof shall identify and set release prices for the individual parcels comprising the eligible project and require the mortgagee to release each parcel upon its sale provided the release price has been paid;

3. The developer provide mortgagee***'s*** title insurance, casualty and liability insurance and builders risk insurance, all by insurers and in such amounts as the Agency may require;

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4. The mortgage in favor of the qualified lender financing the eligible project be the only encumbrance on the eligible project securing indebtedness for borrowed money; and

5. Loan documents and all security therefor expressly reflect the rights and benefits of the Agency arising from the undivided interest and providing for the recognition of the rights of the Agency as a lender pursuant to its acquisition of the undivided interest.

5:80-23.8 Housing incentive note purchase agreement requirements

(a) Each housing incentive note purchase agreement entered into by the Agency shall state that it expires at a date not later than the second anniversary of the date of entering into such housing incentive note purchase agreement.

(b) The amount of the undivided interest agreed to be purchased pursuant to each housing incentive note purchase agreement may not exceed 30 percent of the monies being loaned by a qualified lender with respect to such eligible project. The foregoing restriction is in addition to, and not in derogation of, any other limits contained within this subchapter.

(c) Each housing incentive note purchase agreement shall require that the developer pay all costs incurred by the Agency in connection with the preparation, execution and delivery of such housing incentive note purchase agreement, and in connection with any litigation arising out of such housing incentive note purchase agreement or any rights the Agency may have with respect thereto, including, in each case, and without limitation, all reasonable fees and disbursements of counsel to the Agency.

(d) Any request for an extension of the termination date of a housing incentive note purchase agreement shall be treated as an application for a new housing incentive note purchase agreement, and all of the provisions of this subchapter shall apply to such request as if it were an application for a new housing incentive note purchase agreement.

5:80-23.9 Fees

(a) No application for a housing incentive note purchase agreement shall be accepted unless it is accompanied by a nonrefundable application fee in an amount to be established from time to time by the Agency.

(b) No housing incentive note purchase agreement shall be entered into by the Agency unless on or before the date of entering into such agreement, there has been paid to the Agency a nonrefundable purchase fee in amount to be established from time to time by the Agency.

(c) The Agency may establish, from time to time, additional fees as it deems necessary to defray its reasonably estimated costs of administering the program contemplated hereby.

5:80-23.10 No discrimination

(a) Developers must comply with all applicable Federal, State or local fair housing and civil rights laws and regulations. Federal and State laws provide that developers may not discriminate based upon race, color, creed, religion, sex, national origin, age or handicap.

(b) Developers must also comply with requirements imposed in Agency statutes and rules.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF PARKS AND FORESTRY

Natural Areas and the Natural Areas System

Readoption with Amendments: N.J.A.C. 7:5A

Proposed: April 5, 1993 at 25 N.J.R. 1350(a).

Adopted: June 15, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: June 17, 1993 as R.1993 d.350, **without change**.

Authority: N.J.S.A. 13:1B-3, 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; 13:1B-15.100 et seq.; 13:1D-9; 13:1L-1 et seq.; and 23:7-9.

DEPE Docket Number: 18-93-03.

Effective Date: June 17, 1993, Readoption;
July 19, 1993, Amendments.

Expiration Date: June 17, 1998.

Summary of Public Comments and Agency Response:

Notice of proposed readoption with amendments was published on April 5, 1993, in the New Jersey Register at 25 N.J.R. 1350(a). In addition, secondary notice of the proposal was published on March 19, 1993, in the Asbury Park Press, March 24, 1993 in The Star-Ledger, April 2, 1993, in The (Trenton) Times, and April 5, 1993, in the Courier-Post. All four notices invited written comments to be submitted by May 5, 1993.

No comments were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:5A.

Full text of the adopted amendments follows.

7:5A-1.3 Definitions

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

. . .

"Management objective" means the stated purpose or goal of designating an area to the Natural Areas System, towards which management of the area is to be directed.

. . .

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

7:5A-1.6 Natural areas designation

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

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

1. A management objective for the area;

2.-3. (No change.)

(d)-(f) (No change.)

7:5A-1.7 Classification of natural areas

(a) Interim classification of natural areas shall be related to the management objective of the area.

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

7:5A-1.8 Natural area management plans

(a) (No change.)

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

(c) An adopted management plan may supersede the interim management practices listed at N.J.A.C. 7:5A-1.9, if the Commissioner determines through his or her approval of the management plan that the practices in the management plan more specifically address the requirements of the management objective for that area. Any interim management practice listed at N.J.A.C. 7:5A-1.9 and not specifically addressed or superseded by the adopted management plan for the area shall remain in effect in a natural area following adoption of the management plan.

(d) Each management plan shall include, but not be limited to:

1.-3. (No change.)

4. Any management practices that will contribute towards preservation in accordance with the management objective;

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5. (No change.)
6. An evaluation of the current boundaries and changes, if necessary, to achieve preservation in accordance with the management objective.
(e)-(i) (No change.)

7:5A-1.9 Interim management practices
(a)-(b) (No change.)
(c) Upon finding that an interim management practice listed below at (e) or (f) would be detrimental to achieving a specific management objective, the Council shall recommend to the Commissioner the substitution of a more appropriate interim management practice. Should the Commissioner concur with the recommendation of the Council, the Commissioner may approve substitution by a more appropriate interim management practice.
(d) (No change.)
(e) The following interim management practices apply generally to all natural areas upon designation to the System and until and unless superseded by the provisions of an adopted management plan:
1.-4. (No change.)
5. Existing structures may be maintained in a natural area; new structures and enlargement of existing structures may be undertaken upon approval by the Commissioner, provided the structures directly or indirectly contribute to the management objective; new structures, of a temporary nature, may be constructed for research purposes in accordance with N.J.A.C. 7:5A-1.10;
6.-8. (No change.)
9. All wildfires shall be brought under control as quickly as possible; after a fire within a natural area, there shall be no cleanup or replanting except as approved by the Commissioner to achieve the management objective or for reasons of health and safety;
10.-11. (No change.)
12. Habitat manipulation may be undertaken if preservation of a particular habitat type or species of native flora or fauna is included in the management objective of the natural area and upon approval by the Commissioner of a specific habitat manipulation plan prepared by the Department.
13.-16. (No change.)
(f) (No change.)

7:5A-1.10 Procedures for conducting research and collecting specimens
(a)-(b) (No change.)
(c) The administering agency shall review the submission and approve, conditionally approve, or disapprove the application for research or collection. The decision shall be based on:
1. The relationship of the activity to the management objective of the area and the benefits to be derived;
2.-3. (No change.)
(d) (No change.)

7:5A-1.11 Enforcement of rules
(a) Remedies for the violation of the provisions of this chapter applicable to those State-owned or leased lands, waters and facilities administered by the Department, other than wildlife management areas or reservoir lands, shall be as provided at N.J.S.A. 13:1L-23.
(b) Penalties for the violation of the provisions of this chapter applicable to State-owned or leased lands under the control of the Division of Fish, Game and Wildlife shall be as provided at N.J.S.A. 23:7-9.

7:5A-1.12 Boundaries of natural areas
(a)-(i) (No change.)
(j) The Commissioner shall review the recommendation of the Council and shall take one of the following actions on the proposal:
1. Approve the boundary change, effective upon publication of notice of the boundary change in the New Jersey Register, upon a finding that the boundary change:
i. (No change.)
ii. Serves to protect the natural area or further its management objective; or
2. (No change.)
3. Deny the proposal, effective upon publication of notice of the denial in the New Jersey Register, upon a finding that the proposed boundary change:
i. (No change.)
ii. Does not serve to protect the natural area or further its management objective.

7:5A-1.13 Natural Areas System
(a) The following are designated as components of the Natural Areas System:
1. Absegami Natural Area:
i. (No change.)
ii. Management Objective: preservation of Atlantic white cedar and pine/oak communities, southern swamp habitat, and rare species habitat;
iii.-iv. (No change.)
2. Allamuchy Natural Area:
i. (No change.)
ii. Management Objective: preservation of a hardwood forest of significant size and successional fields and protection of a rare plant community;
iii.-iv. (No change.)
3. Batsto Natural Area:
i. (No change.)
ii. Management Objective: preservation of a southern swamp, Pine Barrens bog and floodplain habitats, and rare species habitat;
iii.-iv. (No change.)
4. Bearfort Mountain Natural Area:
i. (No change.)
ii. Management Objective: preservation of scrub oak and hardwood swamp forests, and rare species habitat;
iii.-iv. (No change.)
5. Bear Swamp East Natural Area:
i. (No change.)
ii. Management Objective: preservation of ecological communities and relationships, management of bald eagle nesting site and other known and potential endangered species habitat;
iii.-iv. (No change.)
6. Black River Natural Area:
i. (No change.)
ii. Management Objective: preservation of mesic, marsh, floodplain habitat, and rare species habitat;
iii.-iv. (No change.)
7. Bull's Island Natural Area:
i. (No change.)
ii. Management Objective: preservation of a northern floodplain habitat, and rare species habitat;
iii.-iv. (No change.)
8. Bursch Sugar Maple Natural Area:
i. (No change.)
ii. Management Objective: preservation of a northeastern climax forest, and sugar maple/mixed hardwood community;
iii.-iv. (No change.)
9. Cape May Point Natural Area:
i. (No change.)
ii. Management Objective: preservation of freshwater marsh behind a coastal dune, habitat diversity for migratory birds, and rare species habitat;
iii.-iv. (No change.)
10. Cape May Wetlands Natural Area:
i. (No change.)
ii. Management Objective: preservation of tidal salt marsh ecosystem and rare species habitat;
iii.-iv. (No change.)
11. Cedar Swamp Natural Area:
i. (No change.)
ii. Management Objective: preservation of southern swamp and floodplain habitat, Atlantic white cedar, red maple and pine/oak forest communities, and rare species habitat;
iii.-iv. (No change.)
12. Cheesequake Natural Area:
i. (No change.)

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ii. Management Objective: preservation of habitat diversity including hardwood forest, cedar swamp, mature white pine stand, freshwater swamp, Pine Barren outlier and salt marsh, and rare species habitat;
iii.-iv. (No change.)
13. Cook Natural Area:
i. (No change.)
ii. Management Objective: preservation of freshwater marsh habitat;
iii.-iv. (No change.)
14. Dryden Kuser Natural Area:
i. (No change.)
ii. Management Objective: preservation of a northern bog habitat, and rare species habitat;
iii.-iv. (No change.)
15. Dunnfield Creek Natural Area:
i. (No change.)
ii. Management Objective: preservation of a hemlock ravine, and rare species habitat;
iii.-iv. (No change.)
16. Farny Natural Area:
i. (No change.)
ii. Management Objective: preservation of northern mixed oak-hardwood forest, hardwood swamp forest, and rare species habitat;
iii.-iv. (No change.)
17. Great Bay Natural Area:
i. (No change.)
ii. Management Objective: preservation of tidal salt marsh ecosystem and rare species habitat;
iii.-iv. (No change.)
18. Hacklebarney Natural Area:
i. (No change.)
ii. Management Objective: preservation of a river ravine and northern hemlock/mixed hardwood forest, and rare species habitat;
iii.-iv. (No change.)
19. Island Beach Northern Natural Area:
i. (No change.)
ii. Management Objective: preservation of barrier island dune system, plant community associations, and rare species habitat;
iii.-iv. (No change.)
20. Island Beach Southern Natural Area:
i. (No change.)
ii. Management Objective: preservation of barrier island dune system, saltwater marsh, freshwater bogs, and rare species habitat;
iii.-iv. (No change.)
21. Johnsonburg Natural Area:
i. (No change.)
ii. Management Objective: preservation of habitat diversity for rare species;
iii.-iv. (No change.)
22. Ken Lockwood Gorge Natural Area:
i. (No change.)
ii. Management Objective: preservation of hemlock/mixed hardwood forest with highly varied understory, and rare species habitat;
iii.-iv. (No change.)
23. Liberty Park Natural Area:
i. (No change.)
ii. Management Objective: preservation of a salt marsh in upper New York Bay;
iii.-iv. (No change.)
24. Manahawkin Natural Area:
i. (No change.)
ii. Management Objective: preservation of a mature bottomland hardwood forest, and rare species habitat;
iii.-iv. (No change.)
25. North Brigantine Natural Area:
i. (No change.)
ii. Management Objective: preservation of salt marsh habitat, coastal dune, and rare species habitat;
iii.-iv. (No change.)
26. Osmun Forest Natural Area:
i. (No change.)
ii. Management Objective: preservation of a northeastern mixed hardwood forest;
iii.-iv. (No change.)
27. Oswego River Natural Area:
i. (No change.)
ii. Management Objective: preservation of hardwood swamp, pitch pine lowland, pine-oak, Atlantic white cedar, and bog communities, which serve as rare species habitat;
iii.-iv. (No change.)
28. Parvin Natural Area:
i. (No change.)
ii. Management Objective: preservation of mixed oak and pine forest on the Pine Barrens fringe with a diversity of plant and animal species, and rare species habitat;
iii.-iv. (No change.)
29. Ramapo Lake Natural Area:
i. (No change.)
ii. Management Objective: preservation of northern upland habitats and rare species habitat;
iii.-iv. (No change.)
30. Rancocas Natural Area:
i. (No change.)
ii. Management Objective: preservation of freshwater marsh and southern floodplain habitat, including one of the largest stands of wild rice in the State;
iii.-iv. (No change.)
31. Readington Natural Area:
i. (No change.)
ii. Management Objective: preservation of early stages of secondary field succession;
iii.-iv. (No change.)
32. Strathmere Natural Area:
i. (No change.)
ii. Management Objective: preservation of a dune habitat, plant community associations, and rare species habitat;
iii.-iv. (No change.)
33. Sunfish Pond Natural Area:
i. (No change.)
ii. Management Objective: preservation of a lake of glacial origin surrounded by a hardwood forest, and rare species habitat;
iii.-iv. (No change.)
34. Swan Point Natural Area:
i. (No change.)
ii. Management Objective: preservation of tidal salt marsh ecosystem;
iii.-iv. (No change.)
35. Swimming River Natural Area:
i. (No change.)
ii. Management Objective: preservation of habitat diversity including freshwater marsh, saltwater marsh, woodlands, fields and estuary;
iii.-iv. (No change.)
36. Tillman Ravine Natural Area:
i. (No change.)
ii. Management Objective: preservation of a hemlock ravine and associated geologic forms, and rare species habitat;
iii.-iv. (No change.)
37. Troy Meadows Natural Area:
i. (No change.)
ii. Management Objective: preservation of freshwater marsh habitat northern swamp and floodplain habitat, and rare species habitat;
iii.-iv. (No change.)
38. Washington Crossing Natural Area:
i. (No change.)
ii. Management Objective: preservation of natural succession and mixed hardwood forests, and rare species habitat;
iii.-iv. (No change.)
39. Wawayanda Hemlock Ravine Natural Area:
i. (No change.)

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ii. Management Objective: preservation of hemlock/mixed hardwood forest and rare species habitat;

iii.-iv. (No change.)

40. Wawayanda Swamp Natural Area:

i. (No change.)

ii. Management Objective: preservation of extensive northern swamp and forest habitats, glacially formed, spring-fed pond, and rare species habitat;

iii.-iv. (No change.)

41. West Pine Plains Natural Area:

i. (No change.)

ii. Management Objective: preservation of a significant portion of the globally rare Pine Plains community, including rare plant and invertebrate species habitat;

iii.-iv. (No change.)

42. Whittingham Natural Area:

i. (No change.)

ii. Management Objective: preservation of a northern swamp and floodplain forest on a limestone cliff, rare and exemplary natural communities, and rare species habitat;

iii.-iv. (No change.)

(a)

DIVISION OF PARKS AND FORESTRY

Open Lands Management

Readoption with Amendment: N.J.A.C. 7:5B

Proposed: April 5, 1993 at 25 N.J.R. 1354(a).

Adopted: June 23, 1993 by Jeanne M. Fox, Deputy Commissioner, Department of Environmental Protection and Energy.

Filed: June 24, 1993 as R.1993 d.359, **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. 13:1B-3; 13:1B-15.100 through 13:1B-15.107; 13:1B-15.133 through 13:1B-15.145; and 13:16-1 et seq.

DEPE Docket Number: 19-93-03.

Effective Date: June 24, 1993 Readoption;
July 19, 1993 Amendments.

Expiration Date: June 24, 1998.

Summary of Public Comments and Agency Responses:

Notice of the proposed readoption with amendments was published in the New Jersey Register on April 5, 1993 at 25 N.J.R. 1354(a). In addition, secondary notice of the proposal was published as follows: March 26, 1993 in the Asbury Park Press; March 30, 1993 in the Star Ledger; April 2, 1993 in The Trenton Times; and April 5, 1993 in the Courier-Post. All four notices invited wirtten comments on the proposal to be submitted by May 5, 1993.

No comments were received.

Summary of Agency-Initiated Changes:

1. On adoption of N.J.A.C. 7:5B-1.8(b), the Department has deleted the word "new" before the term "applicant" in order to clarify its original intention to give preference to all applicants who have not received funding in the previous fiscal year rather than to limit this preference to applicants who have never received funding from the Open Lands Management Program.

2. After further consideration, the Department has not adopted the proposed amendment to N.J.A.C. 7:5B-1.10(j), which would have provided more specificity about how the Department determines the length of the access covenants required as a condition of all Open Lands Management funding. See 25 N.J.R. 1356 and 1358. On September 7, 1993, the Department plans to re-propose this amendment with additional language addressing the issue of the appropriate term of access covenants for projects involving funding for the permanent installation of utilities under N.J.A.C. 7:5B-1.5(a)10. In the interim between this readoption and the adoption of an amendment to N.J.A.C. 7:5B-1.10(j), the Department will continue to calculate the term of access covenants on a case-by-case basis under the existing language in this section.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:5B.

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

7:5B-1.2 Definitions

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

. . .

"Commissioner" means the Commissioner of the Department or his or her designated representative.

"Department" means the Department of Environmental Protection and Energy.

. . .

7:5B-1.5 Projects eligible for financial assistance

(a) Financial assistance is available for any of the following:

1.-6. (No change.)

7. Purchase of additional liability insurance made necessary because of the use of the property by the public; however, the amount of funding for liability insurance shall only be allowed as an eligible expense if it does not constitute more than 50 percent of the total project costs or $3,000, whichever is less;

8. Filing fees for access covenants and associated legal fees;

9. Professional fees for design, survey and construction of a project in accordance with the approved application; and

10. Installation of permanent utilities which are necessary to enable passive recreational activities to be conducted as part of a project; however, the amount of funding for installation of permanent utilities shall not exceed 50 percent of all project costs, or $3,000, whichever is less.

(b) Financial assistance is available for other activities, provided that they are directly related to recreational activities listed under N.J.A.C. 7:5B-1.6(b).

7:5B-1.6 Recreational activities

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

(c) The following types of activities shall not be eligible for financial assistance:

1.-3. (No change.)

4. Any activity requiring major construction or clearing of land, paving with impervious surface material or enclosed structures.

7:5B-1.7 Application and review procedures

(a) The landowner, or the landowner's agent designated by a properly executed Power of Attorney, shall submit an application for financial assistance on a form provided by the Department. In the case of multiple landowners, one agent designated by all such landowners shall submit an application.

1. (No change.)

2. If an applicant does not submit a complete application, the Department shall send notice to the applicant within five working days of receipt of the application. The notice shall describe the information missing from the application and shall contain a deadline for the applicant to submit the missing information to the Department for consideration. If the applicant does not supplement its application by the deadline established by the Department, the Department may deny the application.

(b) The Department shall notify State and local agencies with jurisdiction over the real property that it has received an application for financial assistance under this chapter. The notice shall include a brief description of the proposal, the location of the real property by lot and block number, and a deadline for the State or local agency to submit comments on the proposal to the Department for consideration.

(c) (No change.)

(d) Within 30 days of receipt of the complete application, the Department will either deny the application, citing the reasons for denial, or conditionally approve the application.

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(e) Final approval of the application shall be specifically contingent upon compliance by the applicant with the following terms and conditions:

1. Receipt by the landowner of all permits which are necessary in order to implement the proposed project as described in the conditionally approved application;

2. Execution by the Department and the landowner of an agreement in accordance with the provisions of N.J.A.C. 7:5B-1.9, which sets forth the substantive terms and conditions by which all financial assistance will be disbursed;

3. Execution by the landowner and the Department of an access covenant in accordance with the provisions of N.J.A.C. 7:5B-1.10, which assures public access for a specified time period; and

4. (No change.)

(f) An applicant may submit only one application for funding per year for the same property.

(g) The Department may establish a maximum funding amount and a deadline for accepting applications for financial assistance under this chapter through publication of notice in the New Jersey Register.

7:5B-1.8 Factors supporting grant approval

(a) The factors which the Department will consider in its determination of eligibility of a proposed project include, but are not limited to, the following:

1.-2. (No change.)

3. Project involves the protection and appreciation of natural resources, including the use of conservation easements for preserving open space;

4.-9. (No change.)

(b) Preference in granting approval for funding shall be given to *[new]* applicants who have not received funding in the previous fiscal year.

(c) Landowners who have received Open Lands Management funding in the previous fiscal year for any single property may reapply for further funding in the next fiscal year. However, funding shall be conditioned upon the following:

1. The Department may grant up to 30 percent of the original funding, but not more than $2,500, for the repair or replacement of facilities previously funded under the Act that have been damaged as a result of direct usage under the program, operational problems, vandalism or natural causes; and

2. The Department will give preference to projects seeking funding for new recreational activities at previously funded properties over projects seeking funding for existing recreational uses.

7:5B-1.9 Terms of financial assistance

(a) All financial assistance granted pursuant to this chapter shall be disbursed in accordance with the terms and conditions of an agreement executed by the Department and the landowner for this purpose on a form provided by the Department. The agreement shall contain the following:

1. (No change.)

2. The conditionally approved application incorporated by reference, which sets forth the proposed activities for which financial assistance is being provided;

3. A schedule setting forth the time requirements for the completion of each specific proposed activity and setting forth the maximum amount of the grant to be paid to the applicant upon such completion; and

4. Any other requirements which the Department deems necessary.

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

(d) Financial assistance shall be awarded in a sum to be determined by the Department. The amount to be awarded shall be determined by the actual cost of supplies and labor, based on cost documentation provided to the Department by the applicant.

(e) (No change.)

(f) Funding for additional or alternate work on an approved project shall only be provided after prior approval of the work by the Department.

7:5B-1.10 Access covenant

(a)-(e) (No change.)

(f) Real property covered under the terms of the covenant shall not be diverted to other uses during the term of the access covenant without the prior approval of the Commissioner. Such change in status may cause termination of the covenant and reimbursement ***to be due*** to the Department of all or part of the grant monies awarded.

(g) (No change.)

(h) The landowner shall post and maintain signs supplied by the Department stating ownership of the area, allowed use, and appropriate rules of conduct.

(i) (No change.)

(j) The covenant between the landowners and the Department shall run for a period of ***one or more years*** *[not less than two years, determined as follows:

1. If the Department approves a grant amount of $2,000 or less, the term of the access covenant shall be two years.

2. If the Department approves a grant amount of more than $2,000, the term of the access covenant shall be two years plus one year for every $1,000 of funding or fraction thereof in excess of $2,000]*.

(k) If a landowner obtains additional funding for real property that is already subject to an access covenant under the Act and this chapter, the applicant shall execute a second access covenant for the property. The term of the access covenant shall be calculated in accordance with (j) above, and shall take effect upon the expiration of the existing covenant.

(l) The access covenant shall take effect upon the date the access covenant is recorded by the county clerk of the county in which the real property is located.

(m) The Department shall give the landowner at least one month's notice of the expiration of an access covenant executed under this section. At the landowner's option, the landowner may enter into an additional access covenant, conservation easement, or deed restriction to allow continued use of the funded property for public recreation purposes.

(n) A landowner may execute a conservation easement or deed restriction providing for permanent open space and passive recreational use of the real property in lieu of the access covenant required by this section.

(a)

DIVISION OF FISH, GAME AND WILDLIFE
FISH AND GAME COUNCIL
License, Permit and Stamp Fees
Adopted New Rule: N.J.A.C. 7:25-1.5

Proposed: May 17, 1993 at 25 N.J.R. 1928(a).

Adopted: June 22, 1993 by the Fish and Game Council, Cole Gibbs, Chairman.

Filed: June 24, 1993 as R.1993 d.360, **without change**.

Authority: N.J.S.A. 13:1B-29 et seq., 23:3-1a, 23:3-1.1, 23:3-3, 23:3-4, 23:3-4.1, 23:3-4.11, 23:3-25, 23:3-27.1, 23:3-29, 23:3-56.1, 23:3-59, 23:3-61.3, 23:3-63 and 23:3-66.

DEPE Docket Number: 31-93-04.

Effective Date: July 19, 1993.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

Secondary notice was achieved by mailing news releases to three newspapers of general circulation that cover the State.

No comments received.

Full text of the adoption follows:

7:25-1.5 License, permit and stamp fees

Pursuant to N.J.S.A. 23:3-1a, the fees for hunting and fishing licenses, permits and stamps issued by the Division of Fish, Game

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and Wildlife are as follows. The listed fees include, where applicable, a non-refundable $2.00 application fee as set by the Legislature in N.J.S.A. 23:3-1c and an issuance fee of $.50 as set by the Legislature in N.J.S.A. 23:3-1.1, 23:3-4 and 23:3-4.1.

Resident Fishing	$16.50
Jr/Sr Fishing	7.75
Family Fishing	27.50
Family Supplement	2.25
Non-Resident Fishing	25.25
Non-Resident 7-Day Fishing	16.50
Resident Trout Stamp	7.75
Non-Resident Trout Stamp	15.50
Resident Hunting	22.00
Jr/Sr Hunting	10.75
Juvenile Hunting	3.00
Non-Resident 2-Day Hunting	27.50
1 Day Hunting	7.75
Resident Bow and Arrow	26.25
Jr/Sr Bow and Arrow	12.00
Juvenile Bow and Arrow	3.00
All Around Sportsman	60.50
Pheasant/Quail Stamp	22.00
Woodcock Stamp	2.75
Rifle Permit	14.00
Deer Permit	21.75
Turkey Permit	16.25
Semi-Wild	57.00
Commercial Hunt	222.00
Propagation	7.50
Fish Preserve	167.00

(a)

HAZARDOUS WASTE REGULATION

Hazardous Waste Listings: F024 and F025

Adopted Amendments: N.J.A.C. 7:26-8.13, 8.16 and 8.19

Proposed: March 1, 1993 at 25 N.J.R. 755(a).

Adopted: June 15, 1993 by Jeanne M. Fox, Deputy Commissioner, Department of Environmental Protection and Energy.

Filed: June 17, 1993 as R.1993 d.351, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEPE Docket Number: 06-93-01.

Effective Date: July 19, 1993.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The amendments were proposed March 1, 1993. **No comments were received.** Due to an intervening adoption of a new subsection (e), proposed N.J.A.C. 7:26-8.19(e) is recodified as subsection (f), and the subsection reference in N.J.A.C. 7:26-8.16(a) is likewise revised.

Full text of the adopted amendments follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

7:26-8.13 Hazardous waste from non-specific sources

(a) Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
	...		
	F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in N.J.A.C. 7:26-8.14.)	(T)
	F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.	
	...		

7:26-8.16 Hazardous constituents

(a) Waste streams containing the hazardous constituents listed below, classified as hazardous waste by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 8.7, shall be manifested with the corresponding waste code numbers. The generator may also refer to 40 C.F.R. §261 Appendix VIII, incorporated by reference at N.J.A.C. 7:26-8.19*[(e)]****(f)***. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent. (NOTE: The abbreviation N.O.S. signifies those members of the general class "not otherwise specified" by name in this listing.) These wastes and their corresponding Hazardous Waste Numbers and Chemical Abstract Service (CAS) Registry Numbers are:

(No change in text of list.)

(b) (No change.)

7:26-8.19 Incorporation by reference

(a)-(e) (No change.)

*[(e)]****(f)*** The Department incorporates by reference the Federal listing of hazardous constituents at 40 C.F.R. Part 261, Appendix VIII.

(b)

DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION

Notice of Operative Date

Environmental Cleanup Responsibility Act (ECRA) Rules

Amendments to N.J.A.C. 7:26B-1.3, 1.5, 1.6, 1.8 and 1.9

Take notice that the amendments to the Environmental Cleanup Responsibility Act Rules (N.J.A.C. 7:26B-1.3, 1.5, 1.6, 1.8 and 1.9) proposed on March 2, 1992 at 24 N.J.R. 720(a) and adopted March 1, 1993 by DEPE Commissioner Scott Weiner at 25 N.J.R. 1557(a) are operative as of July 19, 1993 as a result of the enactment of the ECRA reform legislation signed into law on June 16, 1993 as P.L. 1993, Chapter 139 (S1070SCS(2R)).

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(a)

ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Toxic Catastrophe Prevention Act Program

Readoption with Amendments: N.J.A.C. 7:31

Proposed: April 5, 1993 at 25 N.J.R. 1425(b).

Adopted: June 18, 1993, by Jeanne M. Fox, Deputy Commissioner, Department of Environmental Protection and Energy.

Filed: June 18, 1993 as R.1993 d.358, **with substantive and technical changes** not requiring additional public notice and comment. (See N.J.A.C. 1:30-4.3.)

Authority: N.J.A.C. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and 26:2C-1 et seq.

DEPE Docket Number: 20-93-03.

Effective Date: June 18, 1993, Readoption;
July 19, 1993, Amendments.

Expiration Date: June 18, 1998.

The New Jersey Department of Environmental Protection and Energy (the Department) is readopting with amendments rules at N.J.A.C. 7:31, entitled "Toxic Catastrophe Prevention Act Program." These rules incorporate amendments which update and further refine, clarify and simplify the rules in certain areas, provide greater detail in other areas, while improving fairness and discouraging non-compliance. These rule amendments appear in each subchapter of this chapter, namely, N.J.A.C. 7:31-1 through 6: General Provisions (N.J.A.C. 7:31-1); General Requirements, Prohibitions and Procedures (N.J.A.C. 7:31-2); Minimum Requirements for a Risk Management Program (N.J.A.C. 7:31-3); Work Plan Requirements (N.J.A.C. 7:31-4); Confidentiality and Trade Secrets (N.J.A.C. 7:31-5); and Civil Administration Penalties and Requests for Adjudicatory Hearings (N.J.A.C. 7:31-6).

Summary of Public Comments and Agency Responses:

A public hearing was held on April 26, 1993, at the Department's hearing room at 401 East State Street in Trenton, New Jersey to provide interested parties the opportunity to comment on the proposal. The comment period closed on May 5, 1993. Four persons presented both written and oral comments at the public hearing. An additional 18 persons submitted written comments. One person presented only oral testimony at the public hearing. The commenters were as follows:

1. Martin R. Rose, Safety/IH Supervisor; Monsanto Company, Bridgeport, N.J.
2. Alan N. Bogard, Senior Staff Engineer; Exxon Chemical Company, Linden, N.J.
3. Robert Baldisserotto, Associate Manager, Environmental Affairs; Hoffmann-La Roche Inc., Nutley, N.J.
4. Richard W. Prugh, Consultant; Hazard Reduction Engineering Inc., Wilmington, DE.
5. Gerald S. Groszewski, Process Safety Management Coordinator; DuPont Chambers Works, Deepwater, N.J.
6. Joseph Erchiaro, Manager, Environmental Programs; New Jersey Health Products Council, Union, N.J.
7. William W. Cathcart, Chief of Operations and Maintenance; Cape May County Municipal Utilities Authority, Cape May Court House, N.J.
8. Charles Decker, Merck and Company, Inc., Manufacturing Division; Rahway, N.J.
9. Thomas J. Detweiler, Associate Director, Regulatory Affairs; Chemical Industry Council of New Jersey, Trenton, N.J.
10. D.R. Erdley, Bayway Refining Company; a subsidiary of Tosco Corporation, Linden, N.J.
11. Richard Fackler, Environmental Manager; Occidental Chemical Corporation, Burlington, N.J.
12. Raymond A. Freeman, Ph.D.; Engineering Technology and Services; Monsanto Company, St. Louis, Missouri
13. Donald L. Hoven, Director, Environmental Resources; Hackensack Water Company, Harrington Park, N.J.
14. Pawain K. Jain, Technical Manager; Chemicals Division, Akzo Chemicals Inc., Edison, N.J.
15. D.H. Mackay, HS and EA Manager; Amerchol Corporation, Edison, N.J.
16. Anthony Matarazzo, Environmental Coordinator; Elizabethtown Water Company, Bound Brook, N.J.
17. William J. Melofchik, Manager, Environmental Affairs Health/Safety; Ganes Chemical Inc., Carlstadt, N.J.
18. N.M. Misa, Corporate Process Safety Engineer; Witco Corporation, Woodcliff Lake, N.J.
19. Thomas S. Nasife, Plant Manager; Occidental Chemical Corporation, Burlington, N.J.
20. Ron Reed, TCPA Responsible Manager; Rollins Environmental Services (NJ) Inc., Bridgeport, N.J.
21. John P. Sandstedt, Director, Regulatory Compliance; Sybron Chemicals Inc., Birmingham, N.J.
22. David F. Van Derveer, Safety and Environmental Manager; Aqualon Company, Parlin, N.J.
23. Andrew Soos, Manager, Environmental Programs; Givaudan Roure, Clifton, N.J.

The following is a summary of the comments received on the proposal and the Department's responses:

Key Issue Summary—The Equipment and Procedures Subject to the TCPA rules

Comments on several paragraphs of the TCPA rules as amended have a common theme, that is, that the usage of "EHS equipment" and "EHS procedure" in place of "EHS facility" has inappropriately broadened the applicability of TCPA. The main argument in these comments is that the TCPA applies only to equipment and procedures of an EHS facility, that is, a building, equipment and contiguous area whose EHS service consists of at least the registration quantity (RQ) of an EHS. The commenters also argue that TCPA does not apply outside of facilities, that is, to equipment which handle less than the RQ of an EHS even though an RQ of the EHS is at the site. They also assert that equipment facilities which handle less than an RQ: (1) need not be registered; (2) need not be addressed by a registrant's risk management program; (3) need not be subject to a site emergency response plan; and (4) should not be considered to be in EHS service.

The Department disagrees with these assertions and had determined since the inception of the program the reporting requirements for an EHS at a site. The RQ which triggers the requirements of the TCPA rule is "site" based rather than "facility" based. A "site" is defined at N.J.A.C. 7:31-1.5 as the entire plot of land upon which a registrant operates one or more facilities. For example, the questions in Section B of the registration form asks "does the site handle ..... at least the RQ ..... established for that EHS ..." for those sites with an EHS at N.J.A.C. 7:31-2.5(g)2ii. Therefore, two or more facilities located on the same site, each with less than the RQ of an EHS will nonetheless be subject to the requirements of the Act and the rules if the total quantity of the EHS on the site exceeds the registration quantity.

Thus, TCPA applies to equipment outside of a facility with an RQ of an EHS to the same degree as equipment within such a facility regardless of the amount of EHS involved. Such equipment is EHS equipment. The registrant's RMP of the site must address all EHS equipment on the site and all EHS equipment is considered to be in EHS service.

The Department has added and revised key definitions at N.J.A.C. 7:31-1.5 to make the rules consistent and clear on which equipment and procedures at a site which has at least the RQ of an EHS are subject to the rules.

"EHS." This term now means any substance listed in Table I at N.J.A.C. 7:31-2.3, the EHS list.

"Registration quantity." This now means the minimum quantity of an EHS at a site that determines that an owner or operator must register.

"Registered EHS." This is added and means an EHS whose inventory at a site is, or which is generated at a quantity within one hour at a site, equal to or greater than the corresponding registration quantity listed in Table I at N.J.A.C. 7:31-2.3.

"EHS service." This term now means the handling, use, manufacture, storage or generation of a registered EHS.

"EHS facility." This term now means a facility in EHS service.

"EHS equipment." This term now means that equipment whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident.

"EHS procedure." This term now means a step of an operation involving a **registered** EHS which if conducted improperly could directly or indirectly result in or contribute to an EHS accident.

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Key Issue Summary—TCPA fee structure

Revision of definitions and requirements to afford fee cost reduction to selected classes of registrants was the goal of most of the comments received on the new TCPA fee structure.

The fee structure now incorporates a facility-derived fee element in addition to the base fee and inventory-derived fee elements of the original fee structure.

One comment on the expanded definition of facility at N.J.A.C. 7:31-1.5 requested that several facilities in a single building be considered one facility for fee determination purposes (Comment 59). Such a change would reduce the aggregate facility-derived fee paid by each registrant with more than one facility in a single building, but would increase the aggregate facility-derived fee paid by each registrant with just one facility in a single building as determined by N.J.A.C. 7:31-2.15(a)5, since the facility fee contribution for a particular year would be distributed over fewer facilities.

The same commenter (Comment 57) requested that the base fee not be charged to each registrant with more than four facilities at a registered site in view of increased fee cost such sites would encounter because of the new facility derived fee element. This would raise the base fee of each of the registrants with three or less facilities at a site or system, since, according to N.J.A.C. 7:31-2.16(a)7, the base fee contribution of a particular year would be distributed over fewer registrants.

Several comments request that the fee structure be augmented with various individual inspection fees. One commenter requested that a schedule of individual fees be established: one for a new facility startup review as required by N.J.A.C. 7:31-2.10, and another for an existing facility modification review as formerly required by N.J.A.C. 7:31-2.11(b) in the original rules but deleted in the proposal. Additionally, another commenter requests that inspections of site, for whatever reason or circumstance, at a greater frequency than the general TCPA registrant community should carry an individual inspection fee. (Comment 56) Requiring a special fee billing and collection system be established the revenues of individual fees collected by such a system in a fiscal year would be subtracted from the spending plan at N.J.A.C. 7:31-2.16(c)2 of the subsequent fiscal year thus reducing the facility derived fee and base fee contributions that would be paid by registrants during that year.

A comment, in applauding the new Department plan to conduct RMP inspections to verify TCPA at a frequency appropriate to the administration of the program at N.J.A.C. 7:31-2.12, requests that an inspection target of once every three years should be set. This would provide all registrants with reduced costs of facility-derived fee and base fee.

The commenter who requested waiving of base fee to larger registrants cited the special facility fee treatment of water treatment systems at N.J.A.C. 7:31-2.16(j) as justification for special fee treatment to large registrants. (Comment 57) However, another comment (Comment 61) discussed both sides of the special water treatment single facility fee: two industrial commenters called it unjustifiable and a water treatment commenter praised payment of one facility as reflecting Department effort to inspecting such registrants.

The Department disallows requests for facility or base fees for special registrant categories. The facilitiy-derived fees that will be charged to registrants are designed to reflect the level of effort for the Department to review the registrant's RMP as implemented for a facility. A RMP has elements that apply uniquely to a facility which Department staff would review, namely, documentation as required at N.J.A.C. 7:31-3.3, safety reviews at N.J.A.C. 7:31-3.4, standard operating procedure at N.J.A.C. 7:31-3.5, preventive maintenance at N.J.A.C. 7:31-3.6, operator training at N.J.A.C. 7:31-3.7, risk assessment at N.J.A.C. 7:31-3.9 and emergency response to N.J.A.C. 7:31-3.10. Furthermore, the Department plans to study and discuss with affected parties whether all registrants should pay a facility-derived fee for each of their facilities.

As further discussed in the response to Comment 56, the Department has not changed the fee structure to incorporate a "per-visit" fee, because the suggested changes would create a less equitable, substantially more costly fee structure, that would also become significantly inaccurate upon an increase of registrants due to pending Federal release prevention regulations.

Reducing RMP inspection frequency from once a year to once every three years is a concept the Department is willing to consider in part. A variable inspection frequency will at least be based on considerations of the level of risk reflected by the substances, facilities and activities at a site and the level of RMP performance by that site's registrant. Input on criteria of registrant RMP performance would be expected from a proposed TCPA Advisory Committee, which could address various other issues pertinent to the TCPA program.

General Comments

1. COMMENT: Part of the changes in the proposed rules appear to have been made to achieve better agreement with similar Federal regulations such as Federal Occupational Health and Safety Administration (OSHA) Process Safety Management, and those pending to implement the Clean Air Act Amendments. The commenter questions the need for change at this time. (23)

RESPONSE: It is the policy of the Department to amend rules as needed to address problems when found or as experience is gained, to eliminate an uncertainty when found or to reconcile the rule with Federal regulations which will be adopted. These rules need clarification without unnecessary delay. Changes in these rules will be made to reconcile them with Federal Clean Air Amendments of 1990 regulations when they are adopted by the Federal government.

2. COMMENT: Commenters indicated that they appreciated the Department's efforts to clarify and to be fairer with the rules since complexity leads to compliance obstacles. (16, 6)

RESPONSE: The Department appreciates the positive comments.

3. COMMENT: A commenter indicated appreciation for the Department's work in assisting companies to implement the TCPA program. (18)

RESPONSE: The Department appreciates the positive comment.

4. COMMENT: Under N.J.A.C. 7:31-2.16, the commenter disagrees with the generic application of TCPA rules without regard to other regulatory programs in place which offer protection to the off-site community. According to the commenter, TCPA fees are based on anticipated quantities of EHS and should be based on the previous year's inventory rather than on estimated future inventory, since hazardous waste incineration service facilities have highly variable and unpredictable quantities of EHS's. TCPA rules are geared towards facilities which manufacture or which use EHSs, whereas hazardous waste incineration facilities services destroy waste with EHSs. Additionally they cannot rapidly respond to business oportunities involving new EHS materials. (20)

RESPONSE: The Department recognizes the unique nature of hazardous waste incineration service facilities in that they provide services to destroy unwanted waste materials, as opposed to manufacturing facilities. Because of the catastrophic threat to public health and safety, the Toxic Catastrophe Prevention Act N.J.S.A. 13:1K-19 et seq. contains no reference to exempting hazardous waste management facilities from provisions of the Act. The term "handle, use, manufacture, store, or have the capability to generate" does not specifically refer to only manufacturing facilities. Hazardous waste management facilities which handle and store greater than registration quantities of extraordinarily hazardous substances are subject to the regulations of the act. As indicated in N.J.A.C. 7:31-2.16(g), fees shall be calculated based on the inventory reported in section D of the registrant's registration form on file with the Department as of the previous December 1. N.J.A.C. 7:31-2.5(e) provides for each registrant to submit an updated registration form to the Department within 30 days after a change occurs which make those sections of the registration form incorrect, including, but not limited to, any changes in the registrant's maximum EHS inventory. Registrants can register for a number of EHS's at a minimum of the registration quantity, and then update the registration form as inventories are increased, within the 30 day period. The Department recognizes the special needs of a service facility and will work with the facility staff to expedite processing of registration forms to facilitate their ready response to business opportunities.

5. COMMENT: A commenter concluded the Department overstepped its authority by significantly increasing the registrant's already paper intensive regulation. This is contrary to the alleged paper reduction asserted in the proposed readoption with amendments. (17)

RESPONSE: The Department disagrees with the comment because the rules proposed for readoption with amendments will reduce the registrant's paperwork burden by simplifying some document requirements and eliminating some document submittals. Moreover, the program's chemical safety engineers, in a continuous dialogue with the regulated community, have repeatedly identified paperwork reduction methods to the registrants.

Additionally, the rules have been brought into concert with the Occupational Safety and Health Administration (OSHA) process safety

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management rule, 29 C.F.R. 1910.119, wherever possible, to minimize paperwork. The Department supports the Federal Paperwork Reduction Act and is cognizant of the increased paper burden on the registrants from pending federal environmental rules.

6. COMMENT: A commenter states that N.J.A.C. 7:31-3.6, Preventive maintenance program, is a good example as to how the TCPA requirements should be specified. N.J.A.C. 7:31-3.5, Standard operating procedures, and N.J.A.C. 7:31-3.10, Emergency response program, on the other hand, are overly specific. (2)

Another commenter suggests that the Department provide more guidance and fewer mandated detailed requirements in its rules. (21)

RESPONSE: The Department feels the need to address the requirements of the standard operating procedures (SOP) and the emergency response (ER) program more specifically than the requirements of the preventive maintenance program.

The intent of a preventive maintenance program is, in general, well understood both by the industrial and non-industrial facilities. On the other hand, it is quite the contrary so far as the SOP and ER procedures and plans are concerned. The intent of the SOP is to prevent a release of EHS by describing various mode of operations and preventive action plans. The intent of the ER plan is to prescribe the action plan when an incident does occur. Hence, both these elements of a risk management program demand a high degree of specificity.

One goal of the Act (TCPA) is to ensure that all registrants having an extraordinarily hazardous substance (EHS) in a quantity greater than or equal to the registration quantity for that EHS will have an approved risk management program. The definition of a risk management program as set forth in the Act, at N.J.S.A. 13:1K-21i, includes the eight major elements which the Department has defined as the minimum requirements for a risk management program at N.J.A.C. 7:31-3. N.J.A.C. 7:31-3 has been designed to define equitably for each registrant how to meet the minimum requirements of an RMP. The requirements listed for each element of the RMP are widely accepted by industry as necessary items to implement an effective RMP. To merely propose these requirements as guidance documents rather than through a formal rule would result in unequal implementation of the RMP by the regulated community and would not meet the intent of the Act.

7. COMMENT: A commenter asserts that the amendments included in the proposal to readopt the TCPA program lack revisions that would reduce the cost of the program to registrants with no reduction in the safety of handling, storing, using or generating an extraordinarily hazardous substance at sites in New Jersey.

Rather than the numerous specifications of particular documents, programmatic items and procedural steps, the commenter requests that the requirements covering standard operating procedures (SOPs) of a registrant at N.J.A.C. 7:31-3.5 and the emergency response (ER) program of a registrant at N.J.A.C. 7:31-3.10 should specify program objectives like the requirements covering the preventive maintenance (PM) program of a registrant at N.J.A.C. 7:31-3.6. (2)

RESPONSE: The Department disagrees with a relaxation in the requirements for standard operating and emergency response procedures consistent with the goal-type requirements of the preventive maintenance program. Preventive maintenance is basically concerned with recordkeeping of inspection schedules and their implementation, training of maintenance personnel, and the use of outside contractors for preventive maintenance work. Standard operating procedures involve very specific procedures detailing the day-to-day operation of EHS equipment involving numerous operations which impact on safety. Operators must be thoroughly knowledgable in process flow sheets; normal, chemical, and emergency operations; startup and shutdown procedures; safety procedures; and other specifically detailed procedures which, if not carried out with precision, could result in significantly hazardous situations and potential release of an EHS. Emergency response, which addresses the needs for requirement and procedures for handling emergency situations, is vital to the overall Risk Management Program. Emergencies involve many aspects of safety, training, rapid response, and their demonstration by exercises. It is important that the registrant's risk management program deals with SOPs and emergency response as required in the rule.

8. COMMENT: Two commenters requested a phase-in period subsequent to the operative date of the rules proposed for readoption with amendments, to allow the registrants to incorporate the amendments into their respective Risk Management Programs, and avoid potential civil administrative penalties assessed for noncompliance. Morever, the rules proposed for readoption with amendments should specify the inspection periods based on the operative date to avoid possible retroactive compliance requirements. (2) (22)

RESPONSE: The Department has modified N.J.A.C. 7:31-3.1(b) so that existing registrants will be provided with a grace period of approximately six months to allow incorporating the amendments into their respective risk management programs. (13)

9. COMMENT: A commenter proposes the "RMP" year also be adjusted to the calendar year with April 1, as due date for annual reports. Self auditing and recordkeeping would thus be simplified. Since inspections by the Department would be on an undefined frequency under this proposal, a tie between the annual report and site inspection is not needed. This concept is consistent with a self-auditing program. (1)

RESPONSE: The Department does not agree. Requiring all annual reports to become due on one date puts an undue strain on the administrative section of the Bureau. The Bureau's goal is a more balanced work load. No change based on this comment has been made.

10. COMMENT: A commenter felt that the Department's economic impact analysis had significantly underestimated economic impact to water and waste water authorities who previously utilized chlorine for disinfection purposes and switched to some other chemical for wastewater disinfection. The TCPA program also failed to recognize that inadequate chlorine treatment of drinking water had dangerous potential for toxic effect and had not recognized the economic impact or risk of handling alternative chemicals in the workplace. (7)

RESPONSE: The general purpose of this chapter is to protect the public from catastrophic accidents resulting from chemical releases of extraordinarily hazardous substances to the environment by anticipating the circumstances that could result in such releases and requiring precautionary and preemptive actions to prevent such releases. The TCPA program increases the costs of doing business for registrants involved with EHSs. The increased costs include fees, the cost of remedial measures to reduce risks, and the continued implementation of the risk management program. The use of alternatives to chlorine which are not covered under TCPA eliminates these costs to the water/wastewater treatment facilities. However, registrants in the TCPA program have also realized decreased costs through the implementation of their RMP. This has been seen by the better utilization of personnel and equipment through training and maintenance. Reductions in the number of EHS accidents also result in the decrease in downtime of operations and production.

The purpose of the TCPA program is not to determine the choice of the disinfectant. This choice is the responsibility of the registrant. When switching to a chlorine substitute, the registrant should consider the overall differences in costs between the alternatives. A large number of water treatment facilities have accordingly deregistered from the TCPA program to reduce costs.

The TCPA program does not regulate known non-EHS alternatives to chlorine for water treatment, because of their inherently low risk to the public.

11. COMMENT: Two commenters question whether the current program has been effective in minimizing the potential for a "Bhopal-type" accident. (9) (21)

RESPONSE: In the summary of the proposed readoption with amendments, the Department has reported significant changes brought about by the TCPA program that indicate its effectiveness in minimizing the potential for a "Bhopal type" accident. In the five years since its inception, this program has been extremely successful in reducing the risk of catastrophic accidents by requiring businesses to develop comprehensive risk management programs, and in many cases by encouraging them to reduce EHS inventories and/or switch to less toxic materials.

Most of the existing 137 registrants now have approved risk management programs, and the Department anticipates that all registrants will have approved risk management programs by the end of 1993. When the TCPA program began in 1988, few registrants had comprehensive risk management programs already established; indeed, one quarter had virtually no programs at all. Now most registrants have programs which include comprehensive safety reviews, preventive maintenance programs, standard operating procedures, accident investigation procedures, operator training, emergency response planning, performance of hazard analyses and risk assessments and, where necessary, installation of state of the art risk reduction measures.

In addition, as a result of the TCPA program, total registered EHS inventories in New Jersey have decreased from about 64,000 tons to about 39,000 tons, with the number of TCPA registrants decreasing from

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a maximum of 628 to the present number of 137. By reducing EHS inventories to below registration thresholds or substituting less toxic substances, substantial risk reduction has been achieved throughout the State.

12. COMMENT: There are currently other regulations that are comparable to TCPA. The Federal Occupational Safety and Health Administration (OSHA) Process Safety Management (PSM) rule (29 C.F.R. §1910.119) protects the employees from catastrophic events. N.J.A.C. 7:1E and Federal SARA Title 3 provide protection of the environment and community residents. The commenters maintain the TCPA program is unnecessary and that the OSHA Process Safety Management rule and the other regulations achieve the same end result. (1)

The TCPA rules address offsite incidents, while PSM is related more directly to worker exposure. While addressed in a dissimilar framework, the issues are sufficiently similar to require only one regulatory program. (14) (19) (21).

RESPONSE: The Department disagrees with the commenters. The Occupational Safety and Health Administration regulation at 29 C.F.R. §1910.119 for Process Safety Management (PSM) of Highly Hazardous Chemicals, Explosives, and Blasting Agents, provides for employee protection in the workplace and does not address off-site incidents and protection of the surrounding community. In addition, the goals of the OSHA PSM rule are different from the goals of the TCPA program. They do not address in detail the requirements for risk assessment, and dispersion modeling which are geared toward protection of the public beyond the fenceline of the facility. The EPA Accidental Release program (ARP) under section 112(r) of the Clean Air Act Amendments of 1990, addresses a program similar to TCPA on a national level. The DEPE is currently investigating feasibility of implementing the Federal ARP regulations after they are adopted for sites which use, handle, store or generate substances in quantities above specified thresholds listed by EPA. The EPA has not yet proposed 40 C.F.R. Part 68 Subpart B, "Risk Management Plan Requirements." The Department is not in a position to anticipate changes required by the EPA ARP; however, it plans to review the TCPA rules for consistency with the requirements of the EPA program.

Economic Impact

13. COMMENT: A commenter states that no information to support a FY93 base fee of $6,800 and a facility fee of $2,200 is given in the economic impact section of the proposal at 25 N.J.R. 1441. (9)

RESPONSE: At Exhibit 7 on 25 N.J.R. 1443, unit fee values are presented for FY1993 of

Facility fee, each facility	$2,180
Hazard unit	$ 10
Base fee, each registrant	$6,783

By rounding, the facility fee is $2,200 and the base fee is $6,800. The variable unit fee values for facility fee and base fee are calculated by distributing the facility fee contribution ($691,000) over the number of facilities (317) and the base fee contribution ($914,000) over the number of full base fee equivalents (134.75). Exhibit 6 on 25 N.J.R. 1443 shows how the number of full base fee equivalents is determined, that is, by adding 133 full base fee paying registrants and seven 25 percent base fee paying registrants.

14. COMMENT: Several of the commenters indicated that they did not feel that reductions in the program size is reflected in the program costs or staff size. (2) (9) (7) (17) (23)

Commenters recommend that the Department apply thorough cost analysis to the TCPA program to make program expenses commensurate with program scope. (2) (7) (8) (16)

RESPONSE: The Department has decreased staff and costs as the program has declined in size. Exhibit 14-1 below gives a summary of program size (as measured by numbers of registrants, and inventory of TCPA regulated substances as measured by hazard units) versus program costs and staff for fiscal years 1989 through 1993. As registrants and hazard units have declined from 364 and 110,000 respectively in 1989 to 145 and 65,000 respectively in 1993, program staff declined from 33 to 23 and costs declined.

Exhibit 14-1

	1989	1990	1991	1992	1993
Census of registrants					
January 1	364	240	204	173	145
June 30	284	215	194	164	137[1]
Hazards units (1000) June 30	110	117	104	65	65[1]
Cost of TCPA program ($100)					
Staff	$1705	$1759	$1974	$1911	$1662
Other	195	76	64	96	113
Total	$1900	$1835	$2038	$2007	$1775
TCPA program staff	33	32	30	23	23
Cost of Program Salaries ($1000)					
Staff Salary	$1263	$1228	$1200	$1125	$ 982
Fringe and Indirect	442	531	774	786	680
Sub Total	1705	1759	1974	1911	1662
Other Expense subtotal	195	76	64	96	113
Total	$1900	$1835	$2038	$2007	$1775

Notes:
[1]April 30

15. COMMENT: Two commenters requested information on the composition of the staff of the TCPA program of fiscal years (FYs) 1992, 1993 and 1994 that should be comparable to that presented for FY1991 at 25 N.J.R. 1442. Of particular interest to the commenters is the trend of the ratio of the number of chemical safety engineer staff positions to the number of administration positions for FY1992 through FY1994. The commenters opined that the ratio would trend upward as the program matured. (2) (9) (14)

RESPONSE: Exhibit 15-1 below presents a profile of staff of the TCPA program for fiscal years 1988 through 1994. The staff is divided into three categories: administration, chemical safety engineers, and support staff.

The administration staff includes program management which through 1992 included two section chiefs reporting to one bureau chief, reporting to the division assistant director; clerical staff; and staff with environmental engineer titles (principal and trainee) who handled TCPA registrant records, inspection scheduling, enforcement records and legal files, purchasing, personnel, motor vehicle and other administrative records.

The chemical safety engineer staff consists primarily of persons with chemical safety engineer titles which has varied from five through eight due to resignations, transfers and hirings. A senior environmental engineer and a principal environmental engineer acted as chemical safety engineers during training for the positions to which they were ultimately promoted.

The chemical safety engineer staff primarily conducts TCPA reviews to approve the risk management program of a registrant to audit periodically registrant compliance with its risk management program, to grant permits to construct and operate new EHS facilities, and work with registrants in the work plan track.

The support staff consists of environmental specialists, environmental engineers and scientists who carry on work in compliance, accident inspections, deregistration, enforcement and document preparation and studies to revise the extraordinarily hazardous substance list, to de-

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termine a quantitative criteria of risk, to evaluate air dispersion models and to carry on other activities to support the program.

The staff increase from 18 in 1988 to 34 in 1989 reflected the high water mark level of TCPA registrants in 1988 of some 500 registrants. Total staff of the program declined steadily from 1989 primarily because of the declining need to conduct compliance checks on owners or operators who failed to register or were likely to need to register, activities which extended through FY1991. In addition, the program lost support staff who were transferred to new Department programs. The program projects the need to augment its support staff from five in 1993 to eight in 1994, primarily to help in inspection scheduling and integrating the TCPA program with Federal accident reduction program regulations and to recodify its internal procedures to conform with the adopted rule as revised.

Exhibit 15-1

TCPA PROGRAM STAFFING PROFILE

By Fiscal Year

	1988	1989	1990	1991	1992	1993	1994 Projected
Admin. (1)	9	8	9	9	8	8	6
CSE (2)	8	7	8	7	7	8	8
Support Staff (3)	2	18	15	14	8	7	8
Total	19	33	32	30	23	23	22
Ratio CSE to Admin.	0.89	0.88	0.89	0.78	0.88	1.00	1.33

Notes:

(1) Admin. or Administration staff includes program management, clerical staff and administrative supervisor and staff.

(2) CSE or Chemical safety engineer staff includes staff with principal and senior environmental engineer titles who acted as chemical safety engineers.

(3) Support staff includes supervising, principal and senior environmental specialists, principal and senior environmental engineers and environmental and research scientists.

16. COMMENT: An explanation of the "mandated five percent raise" in salaries of the TCPA program estimated for the budget of fiscal year (FY) 1994 was requested by a commenter to complete the discussion of the program budget of FY1994 that is presented in the text and summarized in Exhibit 4 at 25 N.J.R. 1442. (7)

RESPONSE: The "mandated five percent raise" used in the cost estimate of salaries for FY1994 should have been characterized as a "mandated raise projected at five percent." The five percent figure was used because it was considered a reasonable, conservative estimate. Two factors contribute to the "mandate." A State employee receives nine automatic annual step raises (Increments) within the grade of his or her position on each anniversary of his or her employment. The annual increment is equal to five percent of the base salary of the grade (the first step). Thus the annual step raise represents a marginally decreasing percent of the employee's salary each year. Further, employees at step nine receive no annual step raise. No step increments are awarded after the employee's salary reaches the ninth step.

In addition, a State employee receives a cost-of-living adjustment. For employees covered by contracts negotiated by employee bargaining units with the State, the present schedule of such adjustments is five percent on October 2, 1993 and six percent on June 25, 1994 for the contract period covering July 1, 1992 to June 30, 1995. A State employee in management or executive service may also receive salary adjustment. However, no schedule has been set for such adjustment to these employee categories since June 1992.

17. COMMENT: An explanation of the costs, personnel, services, etc. that are represented by the "indirect expenses" in the TCPA program budgets was requested by two commenters. The TCPA program budgets for fiscal years (FYs) 1991, 1992, 1993 and 1994, discussed in the text and tabulated in Exhibits 3 and 4 at 25 N.J.R. 1442 show the cost element of "indirect expense." (2) (9)

RESPONSE: As applied at N.J.A.C. 7:31-2.16(c)1iii, indirect costs means costs incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results achieved.

The indirect rate is negotiated on an annual basis between the Department and the United States Environmental Protection Agency (USEPA) which is the assigned cognizant agency for the Department. In accordance with Federal OMB Circular A-87, one Federal agency, that is, the USEPA, is designated as the cognizant Federal agency which reviews and approves the indirect cost rate on an annual basis. The basis for applying the indirect cost rate is the sum of direct salaries plus associated fringe benefits. The components of indirect cost rate includes both non-salary costs and salary costs plus associated fringe benefits for Department management and divisional indirect offices. Building rent and the Department allocation from the Statewide Cost Allocation Plan are also included.

Functions included under the Department management include the Commissioner's Office, Deputy Commissioner's Office, Communications and Management and Budget. Management and Budget is further broken down into two divisions:

1. Division of Financial Management and General Services which plans, budgets and manages the finances of the Department; manages purchasing and contract administration; coordinates information systems and office automation; and provides printing, telecommunications, mailing operations and general services to the Department.

2. Division of Personnel which provides recruitment, placement, job classification, payroll processing, compensation administration, job specification development, counseling, and employee health benefits services; conducts an occupational health and safety program; and oversees the Department's Medical Center.

18. COMMENT: A commenter stated he did not agree with the proposed service fee structure at N.J.A.C. 7:31-2.16. The commenter believes that a self supported program does not provide a budgeted cost control or accountability, and allows the Department to allocate all expenses to the regulated community without control of the costs. The Department should have a budget approved by the Legislature and be required to operate within that budget, with fees and fines allocated to the General Treasury. The commenter requests that the Department provide a citation of the section of the TCPA statute which requires the program to be self-supporting. Under its fiscal management the Department can add as many positions and spend as much as it feels necessary to regulate fewer registrants, with decreased quantities of EHS materials in the program. (17)

Other commenters request accountability for ensuring that non-related State Programs are not being supported by the TCPA program. (1) (8)

RESPONSE: N.J.S.A. 13:1K-31 states that the Department is authorized to charge and collect fees from facility owners registered pursuant to N.J.S.A. 13:1K-22 in accordance with a schedule adopted as a rule or regulation, which schedule shall reflect the costs to the Department of reviewing individual facilities while enabling the Department to continue to administer the program on a self-supporting basis.

The fees and fines that are collected go to the General Treasury through the Bureau of Revenue. The fee revenues received are appropriated to the program by the Legislature each year in its budget legislation. Fiscal and personnel management, within the Department, preclude the unrestricted spending of funds. The management and budget affairs of the Department are under the direction of an assistant commissioner who applies programs of control to make sure the staffing and costs match the level of effort.

19. COMMENT: In reference to N.J.A.C. 7:31-2.16, Fees, the Department states in the Economic Impact section of the TCPA proposed readoption document that a registrant will still have the opportunity of reducing its annual fee by reducing EHS inventory. In addition a registrant may reduce its annual fee by reducing the number of facilities

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at its site. The commenters indicate the fee structure should not be established as a punitive measure. In addition, a commenter claimed that this approach distributes the expense of the Department costs from registrants which are in a position to reduce inventories, to registrants which are not. The inventory derived fee should be directly related to review costs. The Department should demonstrate how inventory derived fees are related to costs. (2) (9) (22)

RESPONSE: The fee structure has been changed from a fixed base fee, and an inventory derived fee, because the previous structure did not adequately reflect the effort required to administer the registrants individual risk management programs. The Act authorizes the Department to charge and collect fees to administer a self sustaining program. The fee schedule is designed to generate funds to administer the program and to assess fees to individual registrants based on costs of reviewing registrant facilities. The portion of the fee for EHS inventory also reflects inspection efforts since the greater the inventory the greater the hazard which the program must address. Consequently, the inventory fee is related to the program effort and is in no way intended to be punitive. The lower the inventory, the less effort will be required by the program, and this will result in a cost saving to the registrant. Each year, as part of the process to prepare the program's spending plan, the cost of the TCPA program is subject to review at several stages in the Department. After preparation at the program level it is reviewed by the element assistant director and the division director. It is then reviewed by the Division of Financial Management.

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 7:31-1.1 Scope and applicability

20. COMMENT: The applicability of TCPA has been broadened. This practice increases the cost of compliance but contributes little to risk reduction. An example is the broadened use of the term "EHS equipment." While the proposed definition of "EHS equipment" given in N.J.A.C. 7:31-1.5 has not substantially changed, its usage has changed resulting in a potentially significant increase in the cost of compliance without any improvement to risk management. The term "EHS equipment" should apply only to equipment located within a portion of a facility that has or can contain a quantity of an EHS equal or greater than its registration quantity (RQ). The term "EHS equipment" should not apply to facilities or portions of facilities that do not meet the RQ criteria. Such equipment should not be subject to TCPA mandated safety reviews or a preventive maintenance program. The Department is incorrectly applying its own standards of applicability as given in N.J.A.C. 7:31-1.1(b). (2)

RESPONSE: The Department disagrees that the applicability of the TCPA rules has been broadened. A site that handles, uses, manufactures, stores or has the capability to generate in one hour the registration quantity of an EHS must be registered with the Department. Since the inception of the program, the reporting requirements of an EHS have been on a site basis. For example, the question in Section B of the registration form asks "... does the site handle ... ... at least the RQ ... ... established for that EHS ... ... for those sites with an EHS ..." at N.J.A.C. 7:31-2.5(g)2ii. Equipment within that site whose failure or improper operation would result in or contribute to an EHS accident is EHS equipment. EHS equipment will not be limited to only that equipment which could produce an EHS release, but extends to any equipment which could reasonably contribute to such a release. Any actions necessary to reduce risks at the facility in accordance with the RMP will, of course, be appropriate to the actual risk existing at the facility. Also a registrant may request an exemption from the requirements of N.J.A.C. 7:31-3 for certain non-contiguous and contiguous EHS equipment, if the equipment meets the conditions specified in N.J.A.C. 7:31-2.19 or 2.20. Thus, no change to N.J.A.C. 7:31-2.19 or 2.20 based on this comment has been made.

21. COMMENT: The basis for compliance with N.J.A.C. 7:31 is the capability to store or generate an EHS in at least the registration quantity (RQ) as stated in N.J.A.C. 7:31-1.1(b). As such, owners or operators of facilities with an EHS below the RQ are not subject to the requirements of N.J.A.C. 7:31. With this thought in mind, N.J.A.C. 7:31-2.19 and 2.20 place an unfair burden on TCPA registrants. For identical facilities handling quantities less than an RQ of an EHS, these requirements do not apply and registration is not required. That a site has registration quantities of an EHS at one facility does not cause other facilities at the same site with less than registration quantities to pose a hazard different from that of a non-registrant. There is an inequitable application of N.J.A.C. 7:31 and an undue burden placed on select members of the regulated community.

N.J.A.C. 7:31-2.19 should be deleted in its entirety and N.J.A.C. 7:31-2.20 should be re-written so as to use the RQ or the ATC as the basis for exemption. Instead, the Department has chosen to increase the complexity of N.J.A.C. 7:31-2.19. While the Department has recognized a need to focus TCPA by proposing N.J.A.C. 7:31-2.20, it has applied costly-to-demonstrate criteria that still regulate at the ppm level. The commenters support the need for a contiguous EHS equipment exemption, but have significant concerns regarding the proposed criteria. (2) (9)

RESPONSE: The Department disagrees. A comparison of the definitions of "facility" and "site" found in N.J.A.C. 7:31-1.5 eliminates any confusion regarding the reporting requirements for an EHS stored at a single site. "Facility" means a building, equipment, and contiguous area; and "site" is defined as the entire plot of contiguous land upon which the registrant operates or locates one or more facilities. The registration quantity which triggers the requirements of the Act and these rules are site specific, rather than facility specific. Therefore, two or more facilities located on the same site, each with less than the registration quantity of an EHS, will nonetheless be subject to the requirements of the Act and the rule if the total quantity of the EHS on the site exceeds the specified registration quantity for that EHS.

If N.J.A.C. 7:31-2.19 were deleted as suggested by the commenters, there would be no provision for exempting non-contiguous equipment. The only possible exemptions would be for contiguous equipment. The rule recognizes that certain non-contiguous equipment in EHS service does not pose a threat to an off-site population under any circumstances and can be exempted from the requirements of N.J.A.C. 7:31-3 if the conditions for the exemption are met. Thus, no change based on this comment has been made.

The Department disagrees with the comment that contiguous equipment exemptions be based only on the presence of an ATC or RQ in the equipment. Since the equipment in question is connected to other EHS equipment, the effect of possible interactions between the pieces of equipment during a potential EHS release situation must be considered. A release which results in an ATC beyond the property line could occur. As a result, the registrant must perform a hazard analysis, dispersion analysis and consequence analysis in accordance with the methods set forth in N.J.A.C. 7:31-3.9(d). The exemption will be granted only if the analyses indicate that there will be no off-site impact resulting in death or permanent disability from single equipment or combined equipment releases. Thus, no change based on this comment has been made at N.J.A.C. 7:31-2.19 and 2.20.

However, the Department has revised key definitions and requirements of the rule to establish clearly that the requirements of the Act and these rules are site specific and to make rule requirements consistently reinforce this established concept.

"EHS". This term now means any substance listed in Table I at N.J.A.C. 7:31-2.3, the EHS list.

"Registration quantity." This now means the minimum quantity of a EHS at a site that determines that an owner or operator must register.

"Registered EHS." This is added and means an EHS whose inventory at a site is, or which is generated at a quantity within one hour at a site, equal to or greater than the corresponding registration quantity listed in Table I at N.J.A.C. 7:31-2.3.

"EHS service." This term now means the handling, use, manufacture, storage or generation of a registered EHS.

"EHS equipment." This term now means that equipment in EHS service whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident.

"EHS procedure." This term now means a step of an operation involving a **registered** EHS which if conducted improperly could directly or indirectly result in or contribute to an EHS accident.

N.J.A.C. 7:31-1.1(b) is revised to state that "all owners or operators of **sites** required to register ... shall comply ..." with these rules. N.J.A.C. 7:31-2.4(a) is revised to state that "no owner or operator of a **site** shall handle ... ... at least the RQ of an EHS ..." unless registered. N.J.A.C. 7:31-2.5(c) is revised to state that "each owner or operator of a **site** which will handle an EHS in at least the registration quantity established for the EHS at Table I at N.J.A.C. 7:31-2.3 ..... planning to construct a new EHS facility shall register." The heading of N.J.A.C. 7:31-2.11 is changed to "Modification of EHS **equipment and procedures**." N.J.A.C. 7:31-2.13(b)1 is revised to allow the Depart-

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ment to include in its orders a requirement that the owner or operator or registrant submit a **site's** or a facility's risk management program. Finally, N.J.A.C. 7:31-2.16(c)5i is revised so that the Department will determine the number of **EHS** facilities registered at a site.

The chapter is thus revised to clarify its applicability.

22. COMMENT: If the Department disagrees with the deletion of N.J.A.C. 7:31-2.19, then the following changes to this section are recommended: First, revise the title from "EHS Equipment" to "EHS Facility" in order to be consistent with the recommendation that the term "EHS Equipment" be applied only to equipment in an EHS facility. Secondly, add an exemption based on EHS concentrations below the ATC similar to that exemption found in N.J.A.C. 7:31-2.20(a)2ii. If a facility cannot (or does not) release an EHS at or above the ATC during operation, there should be no need to make a demonstration to the Department as per N.J.A.C. 7:31-3.9(d)2. (2)(9)

RESPONSE: The Department disagrees with the comment requesting a change from "EHS equipment" to "EHS facility" in N.J.A.C. 7:31-2.19. Those facilities within a site that handle, use, manufacture, store or have the capability to generate in one hour the registration quantity of an EHS are EHS facilities and must register with the Department. Equipment within or outside that facility where failure or improper operation would result in or contribute to an EHS accident is EHS equipment. EHS equipment is not limited to only that equipment located within an EHS facility. Thus, no change based on this comment will be made.

The Department agrees with the comment that an exemption be provided for non-contiguous EHS equipment in N.J.A.C. 7:31-2.19 similar to the exemption provided for contiguous EHS equipment in N.J.A.C. 7:31-2.20(a)2ii of the proposed re-adoption with amendments. The rule has been revised at N.J.A.C. 7:31-2.19(a)2 to provide an exemption when the concentration of the EHS in the EHS equipment is below the ATC established by the Department for that EHS.

N.J.A.C. 7:31-1.5 Definitions

23. COMMENT: Two commenters suggested that the actual value of the acute toxicity concentration (ATC) of each TCPA regulated substance be included in the rule. (2,9).

RESPONSE: Previously, the Department published the ATC of each regulated substance being added to the list in the Basis and Background Document and its Appendix for the proposed TCPA rules in September 1987. A guidance document listing all the ATC values including those for the initial list is available from the Department.

24. COMMENT: As given in current N.J.A.C. 7:31-1.5, Definitions, "audit" means an annual review of the registrant's risk management program conducted by an audit team to assess the overall implementation and effectiveness of the risk management program to insure that all risk management program elements are in place, up-to-date, and being executed as planned.

Delete the word "annual" and add the words "all or part" of the registrant's risk management program to reflect the change that not all aspects of the risk management program need not be audited during each review. (2) (9)

RESPONSE: The term "audit" refers to the internal audit by the registrant. In N.J.A.C. 7:31-2.12(c) and (d), Inspections, the Department has changed the frequency of inspection to a frequency appropriate to the administration of the program and has, upon adoption, deleted references to "audit". The Department will perform "an RMP inspection at a registrant's site" rather than "an RMP audit inspection at a registrant's site" since "audit" is defined at N.J.A.C. 7:31-1.5 as "an annual review." The word "audit" is also deleted from the definition of "risk assessment section." Accordingly, the term "annual" has not been deleted from the definition of the term "audit" at N.J.A.C. 7:31-1.5.

25. COMMENT: As given in proposed N.J.A.C. 7:31-1.5, Definitions, "EHS equipment" means that equipment systematically integrated within an EHS facility whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment. EHS equipment includes fire suppression, risk mitigation and EHS release detection equipment.

The commenters request that the Department modify the definition to exclude from "systematically integrated" that equipment which contains only de minimus quantities of an EHS that would not contribute to a reportable EHS incident. The commenters feel that broad use of "EHS equipment" is an unwarranted expansion of TCPA and that only equipment and facilities that meet the registration quantity criteria should be subject to the risk management program. (2) (9)

Another commenter requests that the Department modify the definition of EHS equipment to clarify that such equipment is that in which an EHS is stored or used at or above the registration quantity. (17)

RESPONSE: The Department does not agree. The determination of systematically integrated equipment is a function of the hazard analysis. Whereas such equipment "normally contains" only de minimus quantities of an EHS, under upset conditions as shown by the hazard analysis, the quantity increases. This equipment remains the final defense from a release to the atmosphere and therefore remains EHS equipment. Equipment whose malfunction could cause an over pressurization of associated EHS equipment is determined by the hazard analysis would remain EHS equipment. Thus, EHS equipment is not limited to equipment within an EHS facility nor equipment containing in excess of de minimus quantities of an EHS, but applies to all equipment whose malfunction could result in an EHS release. Such equipment would also include EHS shipping container handling equipment, which has accordingly been added to the definition.

26. COMMENT: The commenter requested that the definition of "EHS facility" be revised to clarify that the EHSs covered are the EHSs at or exceeding the registration quantity. (17)

RESPONSE: The Department has changed the definition of "EHS facility" to mean a facility in EHS service as part of its revision to clarify the applicability of these rules set forth at N.J.A.C. 7:31-1.11(b).

27. COMMENT: One commenter stated that the definition of EHS facility emergency response team in N.J.A.C. 7:31-1.5 should be deleted or modified to read "EHS facility emergency response team means those personnel responsible for responding to an EHS emergency at an EHS facility." By specifying the responsibilities of an EHS operator in an emergency, the Department's definition goes beyond its authority. (17)

Another commenter requested that the Department's definition should be modified so that the EHS facility emergency response team's duties "should include, but may not be limited to, emergency shutdown." (1)

RESPONSE: The Department disagrees with the suggested changes of the definition. The definition specifies that the EHS operator's duties may be limited to emergency shutdown, notification of an emergency to supervisors or the emergency response team, and use of emergency protective equipment. The intent of the Department is to leave the details of these duties up to the facility management personnel; however, at a minimum, these items should be addressed at a minimum by those personnel responsible for responding to an EHS emergency. The EHS operator is responsible for emergency shutdown procedures that are part of an EHS standard operating procedure.

28. COMMENT: The commenter recommends that the Department revise the definition of "EHS operator" in the N.J.A.C. 7:31-1.5, Definitions, to reflect only those substances whose inventory exceeds the registration quantity as follows:

"EHS operator means an employee who is directly involved with a registered EHS, i.e., an EHS used or stored at or in excess of the approved registration quantity or capable of generating in one hour the registration quantity or greater, and qualified and trained in the operations of EHS equipment or procedures." (17)

RESPONSE: The Department has not changed the definition of EHS operator, since it is valid under the clarified definition of "EHS facility." "EHS facility" now means a facility in EHS service regardless of the quantity of "registered EHS" at the facility. "Registered EHS" is an EHS whose total quantity on site is at or in excess of the registration quantity.

29. COMMENT: The commenters request the Department to clarify whether the definition of "EHS procedure" in the N.J.A.C. 7:31-1.5, Definitions, excludes routine updating, administrative corrections, production related changes and similar minor changes where the registrant determines that such changes have no impact on the potential for an EHS accident, and therefore are not subjected to the requirements of N.J.A.C. 7:31-3.15, Management of modifications (change) to EHS equipment and procedures. The commenters also recommend that the Department should replace the phrase "involving an EHS" with "involving a **registered** EHS". (17) (22)

RESPONSE: The definition of "EHS procedure" does not include routine updating, administrative corrections, production schedule changes, etc., since those changes do not constitute a change of an activity that is covered by the EHS procedure. EHS procedures are only those steps of an operation, which if conducted improperly, could directly or indirectly result in or contribute to an EHS accident.

However, the Department agrees that the definition of "EHS procedure" should be changed to apply only to a procedure involving a "registered EHS" since the procedure refers to only those EHS's which

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are stored or handled on a site at or in excess of the registration quantity, that is, an EHS "whose inventory at the site ... ... is "equal to or greater than the corresponding RQ listed in Table I at N.J.A.C. 7:31-2.3.

30. COMMENT: As given in current N.J.A.C. 7:31-1.5, Definitions, "EHS service" means the handling, use, manufacture, storage or generation of a specific EHS.

Two commenters requested that the definition be changed to read "of a specific EHS **within an EHS facility**", distinguishing from EHS facilities that handle de minimus quantities of an EHS and, therefore should not be included in the risk management program. This would limit EHS service to a facility with a de minimus quantity of an EHS. (2) (9)

RESPONSE: The Department disagrees with the suggestion. However, the definition of EHS service has been changed to apply to "storage or generation of a registered EHS" to preclude applying the term "EHS service" to facilities storing or generating an EHS for which the site need not be registered.

31. COMMENT: As given in proposed N.J.A.C. 7:31-1.5, Definitions, " 'Inventory' means the substance balance at the site confirmed by the book value balance, computed after each transaction or at the end of the registrant's accounting day. The book value balance is computed by the standard accounting method: beginning balance, plus receipts, minus shipments or usage, equals ending balance. All balances whether book values or physical values are summations or physical counts of all material contained in shipping containers, storage vessels and in process equipment and piping."

Several commenters request that the Department delete "accounting day" and substitute "accounting period." They further suggest the registrant be allowed to demonstrate that systems are in place to assure maximum inventory limits are not exceeded. The method proposed is too prescriptive. (2) (8) (9) (22)

One of the commenters states that definition does not provide for dealing with the inventory of a continuously generated but not stored EHS. (2)

RESPONSE: The Department does not agree with substituting accounting period for accounting day. The purpose of the inventory is to assure that registration quantities are not exceeded and that a value of the balance on hand is available for emergency response purposes. Unless a daily balance is determined for a balance determined after each transaction which ever represents the lesser effort, the registration quantity can be exceeded and the balance will be unavailable on the day an emergency occurs. The EHSs in generated streams that are immediately consumed are not covered by "inventory" because there is no stock or accumulation as demonstrated by the process flow diagram material balance.

32. COMMENT: As given in current N.J.A.C. 7:31-1.5, Definitions, "New EHS equipment" means any equipment to be placed into EHS service or any EHS equipment to be placed into new EHS service after the operative date of this rule, namely, June 20, 1988. New EHS equipment remains new EHS equipment until all reviews and approvals required by this chapter for the particular piece of new EHS equipment have been completed and the equipment has been placed into EHS service.

The commenter requests that the Department clarify the definition to specifying that new EHS service means the handling, use, manufacture, storage or generation of a specific EHS within an EHS facility. (2) (9)

RESPONSE: The Department does not agree. New EHS equipment means any equipment placed into EHS service and its definition is unchanged. However, the definition of EHS service has been changed to mean handling, use, manufacture storage of generation of a "registered" EHS rather than "specific" EHS.

Facilities within a site that handle, use, manufacture, store or have the capability to generate in one hour the registration quantity of an EHS are EHS facilities and must be registered with the Department.

Equipment within or outside that facility where failure or improper operation would result in or contribute to an EHS accident is EHS equipment. EHS equipment will not be limited to only that equipment which could produce an EHS release, but extends to any equipment which could contribute to such a release. Thus, EHS equipment is not limited to equipment within an EHS facility. Any actions necessary to reduce risks at the facility in accordance with the RMP will, of course, be appropriate to the actual risk existing at the facility. Also a registrant may request an exemption from the requirements of N.J.A.C. 7:31-3 for certain non-contiguous and contiguous EHS equipment, if the equipment meets the conditions specified in N.J.A.C. 7:31-2.19 or 2.20. Thus, no change based on this comment will be made.

33. COMMENT: As given in proposed N.J.A.C. 7:31-1.5, Definitions, "Process flow diagram" means a diagram including a legend of a facility which depicts the use, generation, storage or handling of an EHS showing items of equipment (groups of duplicate equipment may be represented by one symbol, if desired), flow of material from item to item, simplified basic control loops or major control schemes, points of discharge to the environment, and showing or cross-referencing documents which give details of chemicals, operating conditions of temperature, pressure, and stream characteristics, operating cycles and batch sizes where applicable. A process flow diagram includes, or references a block flow diagram that depicts the receipt, handling and storage steps at the site of full, partially filled and empty shipping containers of the EHS.

One commenter recommended deleting "and empty" in the last sentence of the proposed definition change. (8)

RESPONSE: The Department disagrees with the comment. The terms "full, partially filled and empty" referring to shipping containers of EHS have been deleted from the last sentence of the definition of process flow diagram. Thus, a process flow diagram must depict shipping containers at any stage of an EHS procedure whether full, partially filled or partially emptied.

34. COMMENT: In the summary section of the proposed regulations concerning N.J.A.C. 7:31-1.5 addressing the term "registrant," the Department indicates it is necessary for a registrant to register all EHSs, regardless of quantity managed on site. The Department states that this interpretation is consistent with N.J.A.C. 7:31-2.5 and the TCPA registration form. The comments disagree with this interpretation because N.J.A.C. 7:31-2.5(a), (b) and (c) only require facilities with at least the registration quantity to register with the Department. The statement in the Summary does not appear to agree with the proposed regulation. Under the Department's interpretation, one commenter says that registrants would be forced to consider all equipment as "in EHS service." (17) (20)

RESPONSE: The Department agrees that additional explanation is needed concerning the comments on registration requirements in the Summary section for the proposed re-adoption with amendments. N.J.A.C. 7:31-2.5, Registration, requires that each owner or operator of a site handling using, manufacturing or storing at least the registration quantity of an EHS, or who has the capability to generate, within one hour, at least the registration quantity of an EHS, register with the Department.

The comments in the Summary section under the definition of registrant refer only to EHSs which are present on the site in amounts equal to or greater than the registration quantity. These EHSs shall be registered whether or not they are in facilities handling less than the registration quantity for a particular EHS. No change will be made based on this comment.

35. COMMENT: The commenter recommends that the Department retain the current definition of "registrant" in N.J.A.C. 7:31-1.5. The proposed change in the definition to mean an owner or operator of a facility in EHS service will place an undue burden on registrants that have registered quantities of an EHS. The basis for the "registration quantity" was that any amount below that quantity would not pose a significant hazard to a community. The commenter asserts that the potential release quantity for risk assessment should be site specific at one "RQ" or greater. However, the proposed change would mean that any quantity of EHS in any facility at the site, no matter how small, would be covered under the proposed regulations. The commenter believes that this will be difficult to administer, will be unfair to registrants and will do nothing to improve the protection of communities. (9)

RESPONSE: The Department disagrees to change the definition of registrant from that in the proposal. The purpose of registration quantity is to determine whether a site needs to be registered. A site that handles, uses, manufactures, stores or has the capability to generate in one hour the registration quantity of an EHS must be registered with the Department and that EHS is a "registered EHS" of the site. Facilities which handle any amount, no matter how small, of that EHS are in EHS service. Equipment within the site whose failure or improper operation would result in or contribute to an EHS accident is EHS equipment. EHS equipment will not be limited to only that equipment which could produce an EHS release, but extends to any equipment which could contribute to such a release. Any actions necessary to reduce risks at

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the facility in accordance with the RMP will, of course, be appropriate to the actual risk existing at the facility. Also, a registrant may request an exemption from the requirements of N.J.A.C. 7:31-3 for certain non-contiguous and contiguous EHS equipment, if the equipment meets the conditions specified in N.J.A.C. 7:31-2.19 or 2.20. Thus, no change based on this comment will be made.

36. COMMENT: The summary section of the proposed regulations states that the revised definition of "registrant" will require the owner or operator of the site to register each EHS at the site whether or not it is in a facility handling less than the registration quantity of that EHS. This interpretation subjects laboratory chemicals, process additives, minor constituents in mixtures and many other substances to the requirement for annual safety review under N.J.A.C. 7:31-3.4(d)6i (see 25 N.J.R. 1431) without regard to quantity or the potential for catastrophic accident. This interpretation also unfairly subjects the registrant to inventory and fee requirements for less-than-registration quantity substances. These requirements exceed the intent of the program and should be deleted. (22)

RESPONSE: The comments in the summary section under the definition of registrant refer only to EHSs which are present on the site in amounts equal to or greater than the registration quantity. EHSs that are present in amounts less than the registration quantity do not have to be registered, even if other EHSs are registered on a site. No change based on this comment will be made.

37. COMMENT: As given in proposed N.J.A.C. 7:31-1.5, Definitions, "risk assessment section" means all personnel responsible for the implementation and compliance of registrants' risk management programs, including the review of summary risk management program statements, the detailed review of the risk management programs, the creation and implementation of work plans, review of submittals to construct and operate new EHS facilities of owners or operators, review of submittals to exempt EHS facilities and periodic inspections of risk management programs.

The commenter requests that the Department change the definition to read " 'risk assessment section' means all **Department** personnel . . ." (1)

RESPONSE: The Department agrees and has changed the definition accordingly.

38. COMMENT: The commenter requests that the Department clarify what is meant by "risk mitigation" in the definition of "EHS equipment" at N.J.A.C. 7:31-1.5. (2)

RESPONSE: The term "risk mitigation" modifies the word "equipment" and serves to identify that equipment which will reduce risk. Examples of such equipment include scrubbers, incinerators, flares, vapor suppression systems, etc.

39. COMMENT: As given in current N.J.A.C. 7:31-1.5, Definitions, "standard operating procedures" or "SOP" means the document setting forth the operating procedures covering all details of operation involving an EHS that are currently in effect at the facility.

The commenter recommended adding "(s)" to the word document implying the SOP can be a number of documents cross referenced in, and indexed in, the catalog list of documents. (2) (9)

RESPONSE: The Department agrees with the comment and has revised the definition of SOP to include document(s) setting forth the operating procedures. The purpose of SOPs is to have step to step instructions for operating the process stated in simple imperative sentences. Sections of an SOP detailed in N.J.A.C. 7:31-3.5(c) may be addressed in other site manuals, such as, sitewide safety manuals, and emergency response manuals, and MSDS sheets may be referenced by computer. For this reason, the Department is substantially reinstating N.J.A.C. 7:31-3.5(f), previously proposed for deletion, listing: (i) the items of (c) above, (ii) the documents in which those items are located, and (iii) the location of such documents.

40. COMMENT: A commenter requested that the definition of the site emergency response team at N.J.A.C. 7:31-1.5 should be revised to mean those personnel identified in the emergency response plan that respond to an emergency on the site which involves a registered EHS.

By listing the specific functions for which the site emergency response team shall be responsible, the proposed definition restricts the ability of an organization to adapt the team to its own unique organizational needs. (17)

RESPONSE: The Department disagrees that the definition restricts an organization to adapt the team to its own needs. The definition identifies those functions that need to be performed in the event of an EHS emergency. The registrant is allowed the flexibility to assign the responsibility for performing those functions to the registrant's own employees or to outside providers for any portion of these functions as needed.

The requirements of subchapter 3 of these rules apply only to these sites which have been registered as having an EHS in an amount greater than or equal to the registration quantity for that particular EHS. This has been addressed in previous comments. Therefore, no revisions have been made to the definition of site emergency response team.

41. COMMENT: Two commenters suggested the definition of tabletop exercise at N.J.A.C. 7:31-1.5 be revised by replacing the words "site plans, equipment management plans and local street maps" with "including the use of site documents as deemed appropriate for the exercise such as plot plans, manuals, flow diagrams, etc." Exercises should model real life problems and situations, discover areas where plans can be improved, identify additional resource requirements, and improve the coordination and proficiency of response personnel. A registrant is in a better position to determine the appropriateness of the documents to be used in the exercise. (2) (9)

RESPONSE: The Department agrees. The intent of the Department was to indicate examples of documentation which could be used in a tabletop exercise for a simulated EHS release scenario, based on the site emergency response plan. The tabletop exercise should be as close to an accidental release incident as possible. The definition has been revised to read "to include documents relevant to the EHS release scenario such as site plans, equipment arrangement plans, and local street maps referenced by the participants during the exercises."

SUBCHAPTER 2. GENERAL REQUIREMENTS, PROHIBITIONS AND PROCEDURES

N.J.A.C. 7:31-2.3 Extraordinarily hazardous substances list

42. COMMENT: The proposed requirement under N.J.A.C. 7:31-2.3(b) should be clarified to exclude mixtures of substances listed in N.J.A.C. 7:31-2.3(a) at all concentrations below the specified value.

N.J.A.C. 7:31 should not apply to EHSs at less than the RQ. Mixtures containing an EHS should be accounted for only if the RQ is achieved.

Non-registrants do not have to register and, therefore, pay an inventory fee for less than RQ quantities. The same should be true for registrants. By the Department's own definition, such concentrations do not present a risk to the public. Facilities handling less than an RQ quantity of an EHS should not have to go through the costly process of demonstrating the obvious to the Department. There is no risk management justification for this procedure.

Additionally, one commenter recommends that the definition of "mixture" be reviewed by the Department. If the registrant has the EHS present in the form of a mixture that is "bound up" in solution and the EHS cannot volatilize, then this should not be considered a hazard. Furthermore, as the material is diluted or dissolved, its chemical properties, specifically volatility, will change and thus the ATC should be representative of the mixture and not the pure EHS. (2) (9)

RESPONSE: The Department disagrees that N.J.A.C. 7:31-2.3(b) needs clarification or that the term "mixture" needs to be further defined. Solutions or mixtures which contain an EHS must be registered if the quantity of the EHS in the mixture, handled, used, manufactured, stored or generated on site exceeds the registration quantity. Subsequent safety reviews, hazard analyses or risk assessments will determine the actual extraordinarily hazardous accident risk involved and indicate the extent of risk reduction actions that are warranted. Also, if the conditions specified by N.J.A.C. 7:31-2.19 or 2.20 are met, the registrant may request an exemption from the requirements of N.J.A.C. 7:31-3.

Mixtures of substances listed in N.J.A.C. 7:31-2.3(a) are excluded from registration at all concentrations below the specified value. The statement in N.J.A.C. 7:31-2.3(b) applies only to mixtures not listed in N.J.A.C. 7:31-2.3(a). No change based on this comment has been made.

N.J.A.C. 7:31-2.4 Prohibitions

43. COMMENT: N.J.A.C. 7:31-2.4(c)3 requires registrants with an established RMP to obtain written Departmental approval prior to utilizing an existing facility in a new EHS service. N.J.A.C. 7:31-2.4(e)2 requires Departmental written approval prior to the use of a new EHS facility. Two commenters recommend that, for registrants with an approved RMP, the Department either delete or revise the requirement of obtaining approval prior to construction or startup of a new EHS facility, or the utilization of an existing EHS facility for a new EHS.

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The commenters state that these requirements only serve as additional impediments to the relocating or establishment of new manufacturing facilities in New Jersey. (2) (9)

RESPONSE: Error was made by the commenters in citing N.J.A.C. 7:31-2.4(d)2 instead of N.J.A.C. 7:31-2.4(e)2. Under N.J.A.C. 7:31-2.4(e), registrants with an approved risk management program are not required to obtain Departmental approval prior to construction as was stated by the commenters. In order for the Department to manage risk effectively, Departmental approval prior to operating the facility is required. The Department has made reviewing new facility documentation a high priority and is committed to respond within 90 days, a goal which it has met. In addition, the Department's performance in the timely review of submittals regarding new EHS facilities is being monitored to meet the requirements of N.J.S.A. 13:1D-101 to 115 (Doria Bills). Therefore, the Department does not concur that the approval requirements are an impediment to the relocating or establishment of new manufacturing facilities in New Jersey.

N.J.A.C. 7:31-2.5 Registration

44. COMMENT: The Department should specify when to submit the updated new registration form at N.J.A.C. 7:31-2.5(e). (18)

RESPONSE: N.J.A.C. 7:31-2.5(e) has been modified to require the submittal of the updated new registration form by August 22, 1993.

45. COMMENT: The Department should change the time required to update a registration form, at N.J.A.C. 7:31-2.5(e), from 30 days to annual, for any changes other than the increase in the hazard units. (1)

RESPONSE: The Department believes that the 30-day time limit for submittal of an updated registration form is sufficient. The updated information is needed for TCPA compliance inspections which may occur more frequent that annually. Therefore, no change has been made to the reporting period.

46. COMMENT: The Department should clarify N.J.A.C. 7:31-2.5(g)8, if initial registration form means the new updated registration form or the one submitted to the Department at the beginning of TCPA program. (18)

RESPONSE: The word "initial" used at N.J.A.C. 7:31-2.5(g)8 indicates the first time a registrant enters into the TCPA program after the initial registration notification in January 1986.

47. COMMENT: The commenter wants to know if the number of facilities at N.J.A.C. 7:31-2.5(g)1ix are determined based on the definition of facility at N.J.A.C. 7:31-1.5. (18)

RESPONSE: Yes. The determined number of facilities are based on the definition of facility.

N.J.A.C. 7:31-2.6 Risk management program procedures

48. COMMENT: The commenters recommend that the Department revise N.J.A.C. 7:31-2.6(e) which allows any documents to be reviewed either at the site or at the Department at the discretion of the Department to read "at the discretion of the registrant." The Department's ability to review a facility's documents without any limits needs to be offset by the requirements to do so at the facility unless otherwise agreed to by the registrant. Such measures are necessary to protect the highly proprietary information that might be requested for the review. (2) (9)

RESPONSE: The Department must have the discretion to review required documents at the site or at the Department's offices in order to ensure an effective review and the efficient implementation of the TCPA program. However, the Department has been reviewing most of the documents at the site and intends to continue in that fashion. If a registrant feels that the documents involve proprietary information in need of protection, he or she may follow the provisions of N.J.A.C. 7:31-5, Confidentiality and Trade Secrets.

49. COMMENT: Under N.J.A.C. 7:31-2.6(h), "If the Department and registrant reach agreement on the risk management program, the registrant shall enter into a consent agreement with the Department and shall comply with the requirements of the approved risk management program as set forth in the consent agreement. For the registrant, the consent agreement shall be signed by its representative who meets the requirements of N.J.A.C. 7:31-2.17(a)1i and for the Department by the chief of the Bureau of Release Prevention or his supervisor." The reference to N.J.A.C. 7:31-2.17(a)1i should be revised to read N.J.A.C. 7:31-2.17(a)2i, since the knowledgeable person in N.J.A.C. 7:31-2.17(a)1i is not normally authorized to sign, and compliance is not normally under his direct control. (1)

RESPONSE: The Department agrees; however, N.J.A.C. 7:31-2.6(h) has been revised to reference N.J.A.C. 7:31-2.17(d). "All consent agreements and consent agreement addenda shall not be deemed executed unless signed by the highest ranking corporate, partnership or government official, or official at the site with sufficient responsibility to effect the items agreed."

N.J.A.C. 7:31-2.10 New EHS facilities

50. COMMENT: The commenter believes that the provisions for the updating of safety review and risk assessment for new EHS facilities at N.J.A.C. 7:31-2.10(b) should be addressed under the modification procedure at N.J.A.C. 7:31-3.15 instead. The commenter believes the proposed change would constitute an additional and unnecessary regulatory burden which would contribute nothing to risk reduction, and that this requirement should be deleted. (2) (9)

RESPONSE: The Department disagrees with the commenter. The request is not applicable since N.J.A.C. 7:31-2.10 pertains to new EHS equipment and not modified equipment. New equipment requires compliance with N.J.A.C. 7:31-2.10. Modifications of EHS equipment require compliance with N.J.A.C. 7:31-3.15. New equipment generally involves not only equipment installation but also new procedures, revision of piping and instrumentation diagrams and other documents, additional training procedures, outside contractors, and other detailed revisions to the Risk Management Program. The inherent hazards introduced by new equipment, require considerably more effort and more detailed analysis of their effect on the registrant's program.

51. COMMENT: Under N.J.A.C. 7:31-2.10(d) for new EHS facilities, the requirement to enter into a consent agreement with the Department and complete any items of the consent agreement needed prior to placing equipment in EHS service should either be deleted or amended.

The requirements should pertain to sites which do not have an approved Risk Management Program. Consent agreement items should be applied to the new EHS service. There should be no restrictions on starting up a new facility or a new EHS service pending completion of all consent agreement work items. (2) (9)

RESPONSE: The Department agrees with the commenters that the language needs clarification. N.J.A.C. 7:31-2.10 addresses new EHS facilities, which involve new equipment and procedures requiring detailed review and a consent agreement or a consent agreement addendum.

However, what is needed prior to EHS service may not include every item in the agreement. Only all the items of the consent agreement or addendum for this new equipment shall be completed prior to putting the new equipment into service. This language is therefore added to the rule at N.J.A.C. 7:31-2.10(c) upon adoption (recodified from proposed N.J.A.C. 7:31-2.10(d)).

N.J.A.C. 7:31-2.11 Modifications to EHS equipment and procedures

52. COMMENT: The Department should revise "Modification to an EHS facility" at N.J.A.C. 7:31-2.11 so that the management of change procedures at N.J.A.C. 7:31-3.15 are the sole requirement to be met. Also, the Department should require each registrant to develop its management of change as part of its risk management program. (8)

RESPONSE: The Department agrees; however, the rule has already addressed the first suggested change at N.J.A.C. 7:31-2.11(a) to reference N.J.A.C. 7:31-3.15. Also, the Department has already incorporated "management of change" into the risk management program. Therefore, no changes have been made to the rule, beyond a clarification of the section heading.

N.J.A.C. 7:31-2.12 Inspections

53. COMMENT: A commenter requested that the Department develop standards to gauge registrant performance in risk management. The standards, when applied to a registrant with an approved Risk Management Program (RMP) which exhibits good Department annual inspection results with no significant accidental EHS releases, should be the basis for less frequent and/or less stringent Department inspections. Additionally, the Department's scope and approval process for new EHS facilities under construction and start-up should be relaxed and eliminated, respectively, for registrants meeting the performance standards. This policy would induce performance, provide cost savings for the Department and minimize enforcement actions while reducing inventory. (2)

RESPONSE: The Department chemical safety engineers (CSEs) perform the risk management program inspections in accordance with the requirements of the rules. The Bureau of Release Prevention (BRPV) functions in accordance with approved Department administrative control/operating procedures. These procedures provide the standards for inspection including review of the risk management program checklist at N.J.A.C. 7:31-3.14. Additionally, the Department's CSEs are

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highly qualified and have had many years of applied engineering and process industry experience. The proposed (and adopted) changes to N.J.A.C. 7:31-2.12, Inspections, provide notice that RMP inspections will be performed by the Department at a frequency appropriate to the administration of the program.

In addition, the Department agrees to be accessible and assist industry representatives by establishing a "TCPA Advisory Committee" responsible for specified tasks including the development of performance standards to enhance the risk management process.

54. COMMENT: As given in proposed N.J.A.C. 7:31-2.12(c), Inspections, the Department plans to perform an RMP audit inspection at a registrant's site to verify the registrant's compliance with the Act, this chapter and the risk management program or risk reduction plan at a frequency appropriate to the administration of the program.

The Department is to be commended on eliminating annual inspections. Such an approach will provide cost effective risk management implementation by industry and agency oversight by the Department, and reduce the economic drain unique to New Jersey Industry. It is recommended the Department adopt a three to five year base case or target frequency modified by published criteria such as: number of significant reportable EHS accidents, performance based on previous inspection, and new facility status, with partial inspections being conducted during intervening years, if appropriate. (2)(8)(9)(10)

RESPONSE: The Department will adjust the inspection frequency, based on performance criteria which the Department will develop with input from the TCPA Advisory Committee to be created. A variable inspection frequency will at least be based on consideration of the level of risk reflected by the substances, facilities and activities at a site and the level of RMP performance by the site's registrant.

55. COMMENT: The Department should revise N.J.A.C. 7:31-2.12(e) to have the Department suggest corrective actions rather than to simply include actions to correct the deficiencies, as stated in the proposed rule. The facility would determine the corrective actions it plans to take. Both parties would then have to agree on the deficiencies and corrective actions prior to signing the consent agreement. The Department does not have the intimate knowledge of each facility to be able to mandate progress or cost effective remedies; only registrants can do this subject to Department approval. (2)

RESPONSE: The commenter implies the registrant has little input into the draft addendum to the consent agreement. N.J.A.C. 7:31-2.6(g) through (i) require the registrant to either sign and return the consent agreement to the Department, thereby indicating its acceptance of the requirements, or submit its proposals to correct any deficiencies.

If the registrant and the Department do not reach agreement, the Department shall issue an Administrative Order and advise the registrant of its adjudicatory rights. The registrant can submit proposals to correct deficiencies listed in the consent agreement. These proposals are considered by the Department for revisions in the consent agreement. The registrant does have input into finalizing the consent agreement prior to signing the document. Therefore, no revisions have been made at N.J.A.C. 7:31-2.12(e).

N.J.A.C. 7:31-2.16 Fees

56. COMMENT: A commenter believes that a fee structure at N.J.A.C. 7:31-2.16 can be established to accommodate the review process of a new facility "startup" and existing facility "modification" to put the cost burden on these affected facilities. (16)

Another commenter suggested that facilities requiring inspection at a greater frequency than the general TCPA registrant community should pay an "individual inspection fee" for these additional inspections. (9)

RESPONSE: The Department has not changed the fee structure in the manner that the commenters suggest, because implementing the suggested changes would increase the cost borne by registrants generally and would be less equitable than the current structure. Costs to registrants would increase because the suggested changes would require a revamped billing and collections system that the Department would incur substantial costs to implement. In addition, a per-visit inspection fee would be less equitable because it would not reflect the vast disparity in staff time required to inspect different sites; one site may require one person-day to review, while another site may require fifty person-days. The existing fee structure is linked more closely to the staff time required to inspect a particular site.

The Department also notes that USEPA's implementation of section 112(r) of the Federal Clean Air Act may cause a total of 1,500 sites to become subject to TCPA. If that expansion occurs, a much larger portion of staff time may be devoted to reviewing documentation submitted by registrants and less time may be available for on-site inspections. As a result, a per-inspection fee structure would not accurately reflect the allocation of staff resources.

In response to the second commenter, it has been the experience of the Department that no registrant has required inspections at a greater frequency than the "general" TCPA registrant community. Therefore, an "individual inspection fee" is not required.

57. COMMENT: One commenter feels that the restructuring of the fees at N.J.A.C. 7:31-2.16 will shift costs to larger registrants because they have a greater number of facilities. To minimize this cost impact, the commenter suggests that for registrants with more than four facilities, the base fee should be waived. This would constitute an equivalent fee to that charged to water treatment systems at N.J.A.C. 7:31-2.16(j). (5)

RESPONSE: The fee structure has been revised to obtain two objectives: (1) to assess fees to individual registrants based on costs of reviewing individual registrant facilities; and (2) to administer the program on a self-supporting basis each year. The facility-derived fee reflects the incremental effort of the Risk Assessment section staff to review a facility. It is determined by distributing the annual costs assignable to the Risk Assessment Section staff uniformly over the facilities subject to review at registrant sites. The base fee reflects the costs associated with the administrative and support staff as divided by the total number of registrants. Therefore, the waiving of the base fee has not been adopted.

Upon reconsideration of its proposal to assess water treatment and/or wastewater treatment systems a single facility-derived fee, regardless of the number of facilities registered, the Department has determined that it will discuss this issue with affected parties during the summer to develop a more equitable facility-derived fee structure that reflects the Department's actual costs for review effort.

58. COMMENT: One commenter indicated that the spending plan and total spending plan at N.J.A.C. 7:31-2.16(c)1 should be better defined and that the procedures for setting and approving the plans should be more fully explained. (17)

RESPONSE: The spending plan and total spending plan are prepared by the Bureau based on actual current salaries, fringe benefits calculated as a fixed percentage of salaries as established by the Department of Treasury; indirect expenses calculated as a fixed percentage of salaries and fringe benefits, as established by the U.S.E.P.A.; and operating expenses based on historical data. The spending plan must then be approved by the Element's assistant director and the Division director. It is then sent to the Administrative Support Unit in the Division of Financial Management. Here the funds are allocated to the different accounts for the control of expenditures. Here the record of the obligation and disbursement of funds are kept to assure that a given account is not overrun. These are the internal controls that good accounting practices dictate. The complete fiscal procedure, from the collection of fees to the disbursement of funds, has been audited yearly by the Office of the State Auditor. The Office of the State Auditor has consistently confirmed the Department's appropriate allocation of resources.

59. COMMENT: A commenter states that the definition at N.J.A.C. 7:31-1.5 of "facility" as expanded to mean "a building, equipment and contiguous area covered by a process flow diagram standard operating procedures (SOPs) and under common area management" is overly restrictive as applied at N.J.A.C. 7:31-2.16(c)5i. In the case of several batch type facilities in EHS service which are non-contiguous but located in a single building, the several facilities should be considered as one facility for fee determination purposes when the administration of their RMP is by the same registrant staff and if no one facility represents an excessive risk to the public off-site. (5)

Another commenter asks whether one or more EHSs used at a single facility covered by a single contiguous process flow diagram should be considered one facility for fee determination purposes. (18)

RESPONSE: The Department disagrees with the first commenter's assertion that multiple facilities in EHS service in a single building should be considered as one facility for fee determination purposes. The expanded definition of facility is designed to reflect the level of effort for the Department to review the registrant's RMP as implemented for a facility. Considerations of the risk posed by the facility or the registrant's staffing to administer the RMP do not impact on the Department's level of effort. An RMP has elements that apply uniquely to a facility which Department staff would review, namely, documentation as required at N.J.A.C. 7:31-3.3, safety reviews at N.J.A.C. 7:31-3.4, SOP at N.J.A.C. 7:31-3.5, preventative maintenance at N.J.A.C. 7:31-3.6, operator training

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at N.J.A.C. 7:31-3.7, risk assessment at N.J.A.C. 7:31-3.9 and facility emergency response at N.J.A.C. 7:31-3.10.

In response to the question of the second commenter, a facility covered by a single contiguous process flow diagram, standard operating procedures and under common area management is considered as one facility for fee determination purposes regardless of the number of EHSs used there. The level of effort for the Department to review the registrant's RMP as implemented by the facility would not be impacted by the number of EHSs. No change based on these comments has been made.

60. COMMENT: In addition to publishing a summary of the Annual TCPA Fee Summary Schedule Report which includes the adjusted fee schedule in the New Jersey Register during the month of December (N.J.A.C. 7:31-2.16(c)8), the Department should automatically send a copy of the Report to all current registrants so that each party can understand the basis for changes to the fee rates. (2)

Further, when the Department establishes its spending plan to fund the TCPA program for the following fiscal year (N.J.A.C. 7:31-2.16(c)1), which is based in part on the cost of Department staff in all positions of the TCPA program, the Department should review staffing assignments to eliminate overstaffing, if it exists. The review of staffing assignments should at least be conducted annually. (7)

RESPONSE: At N.J.A.C. 7:31-2.16(c)1, the Bureau must establish the spending plan by projecting the amount of money required to fund the TCPA program during the fiscal year in which registrants shall be charged fees. In doing so, they must determine the cost of Department staff in all positions of the TCPA program for which fees are charged for the current fiscal year. This staffing must be approved by the element assistant director and the division director. This yearly review and approval safeguard against overstaffing.

At the time the Department publishes its Annual TCPA Fee Schedule Report in the New Jersey Register required at N.J.A.C. 7:31-2.16(c)8, a copy will also be sent to all current registrants.

61. COMMENT: At N.J.A.C. 7:31-2.16(j), an owner or operator of a registered water treatment system is required to pay a facility derived fee for one facility regardless of the number of facilities in its system. A commenter of a manufacturing firm and a commenter of a manufacturing trade association stated that there is no basis or justification for what they characterized as an unwarranted special exemption to water treatment systems. (2) (9)

A commenter of a water treatment system expressed his appreciation that the payment of only one facility fee by such a registrant is an actual reflection of the cost of Department review effort. (7)

RESPONSE: The Department is reconsidering its proposal to assess water treatment and/or wastewater treatment systems a single facility-derived fee, regardless of the number of facilities registered. The Department will invite affected parties to meet and further discuss this issue during this summer in order to develop a more equitable allocation of facility-derived fees for proposal consistent with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

N.J.A.C. 7:31-2.17 Required signatures and certifications

62. COMMENT: Several commenters requested relief from the signatures and certifications requirements at N.J.A.C. 7:31-2.17(a)1 through 2i. The requirements of absolute knowledge, by the highest ranking individual, in view of the significant civil and criminal penalties imposed for non-compliance, is considered excessive. (1) (2) (17) (5)

One of these commenters also suggested changing the designation of the certifying corporate official at N.J.A.C. 7:31-2.17(a)2i(1) from "a person authorized ... by resolution of the ... board or directors or by corporation by-laws" to "a person at the level of vice president or delegated by the vice president." (5)

RESPONSE: The Department agrees that in certain circumstances the individual with overall responsibility for the information contained in the certified documents may not have "direct knowledge" of that information. Accordingly, the requirement that the certifying individual have "direct knowledge" has been deleted from N.J.A.C. 7:31-2.17(a)1i.

It remains essential to the integrity of the TCPA program, however, for the Department to take measures to ensure the veracity of the information submitted to the TCPA program. Accordingly, the Department continues to require the certification that the information provided in the submittal is, in fact, "true, accurate and complete."

Where the certifying individual does not have "direct knowledge" of the information contained in the submittal, that individual should undertake a thorough inquiry of those individuals that do have "direct knowledge" in order to make the certification. In interpreting N.J.A.C. 7:31-2.17(a)1, since the provision should be construed to effect a reasonable approach consonant with the canons of statutory construction and their application to administrative rules, the Department will avoid any application that would lead to an absurd or unreasonable result. *See Middlesex County v. Browning Ferris,* 252 *N.J. Super.* 134, 140 (App. Div. 1991); *State, Dept. of Health v. Tegnazian,* 205 *N.J. Super.* 160, 174-75 (App. Div. 1985); *In re Adoption of N.J.A.C. 7:26B,* 250 *N.J. Super.* 189, 221 (App. Div. 1991), *aff'd in part and rev'd in part,* 128 *N.J.* 442 (1992).

N.J.A.C. 7:31-2.19 Exemptions for non-contiguous EHS equipment

63. COMMENT: The burden of proof for exemptions of non-contiguous EHS equipment at N.J.A.C. 7:31-2.19 is excessive. While limited distances between non-contiguous equipment can be important in certain catastrophic scenarios, having to perform a hazard analysis, dispersion analysis and consequence analysis should not be necessary for non-contiguous equipment sufficient distances apart. The chance of this "separated" equipment failing simultaneously is miniscule and the burden of proof excessive as such. (11)

RESPONSE: The Department disagrees. The use of only a "sufficient distance apart" criterion is not adequate since this criterion alone does not eliminate the possibility of off-site impact from an EHS release. Instead, the registrant must perform a hazard analysis on all pieces of equipment, and identify all release points, quantities, rates and duration of release. The hazard analysis is then followed by a dispersion and consequence analysis for each scenario, using specified modeling conditions. The exemption will be granted if these analyses show that there can be no off-site impact resulting in death or permanent disability from single equipment or combined equipment. The exemption, because it reflects consideration of site specific parameters has greater applicability and accuracy than previously, and provides greater assurance of safety. No change based on this comment has been made.

64. COMMENT: The requirement under N.J.A.C. 7:31-2.19(e) for annual recertification of a granted exemption is onerous. Registrants should be held accountable through the inspection and audit processes required by the program. Since the regulations require registration of facilities that exceed the EHS registration quantity, annual re-affirmation of the exemption certification should not be required. (8)

RESPONSE: The Department disagrees. An annual re-affirmation is needed to verify that conditions under which the exemption was granted have not changed during the previous year. However, a detailed re-affirmation report will not be required unless substantive changes have been made. A brief re-affirmation statement will suffice. No change based on this comment has been made.

65. COMMENT: Two commenters request that the Department revise N.J.A.C. 7:31-2.19(e) and 2.20(d) so that annual recertification of an exempted EHS facility is not needed by adding "... has not changed so as to affect the conclusion of dispersion and consequence analysis." As currently stated, any changes, regardless of their consequence or relevance to dispersion and consequence analysis, would have to be reported. This is an unnecessary burden on the regulated community as well as on the Department. (2) (9)

RESPONSE: The Department disagrees. The annual re-affirmation need only indicate that the results of the hazard, dispersion and consequence analyses have not changed. Each change, regardless of its consequence or relevance, will not have to be reported. No change based on this comment has been made.

N.J.A.C. 7:31-2.20 Exemptions for contiguous EHS equipment

66. COMMENT: Two commenters request that the Department revise the title of N.J.A.C. 7:31-2.20 by deleting the term "EHS" in order to remain consistent with the recommendations that the term "EHS equipment" be applied only to equipment in an EHS facility. If any piece of equipment is found to be eligible for exemption, then it should no longer be considered "EHS equipment."

One of the commenters recommends that the title be changed to "Equipment containing de minimus quantities of EHS." (2) (9)

RESPONSE: The Department disagrees with the comments that "EHS" be eliminated from the title of N.J.A.C. 7:31-2.20 or that the title be modified in some other manner. The title includes "EHS" because that identifies the equipment for which an exemption can be applied. The definition of EHS equipment has been clarified at N.J.A.C. 7:31-1.5 to mean that equipment within an EHS facility, that is, equipment in EHS service, regardless of the quantity of a registered EHS it handles. Contiguous EHS equipment can be exempted from the requirements of N.J.A.C. 7:31-3 if the conditions specified in N.J.A.C.

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7:31-2.20 are met, but must still be identified as EHS equipment. No change based on this comment has been made.

67. COMMENT: Several commenters are supportive of the exemption for contiguous EHS equipment as now provided at N.J.A.C. 7:31-2.20, but assert that there is no risk-based justification for exempted equipment to be maintained in accordance with N.J.A.C. 7:31-3.6 preventive maintenance. By virtue of the exemption process, the equipment has been shown to not be a potential risk to the community. (2) (8) (9)

RESPONSE: The Department disagrees. The exempted, contiguous EHS equipment must be maintained properly so that equipment failures do not occur which could impact adjacent equipment. To assure good maintenance practices are followed, the designated equipment must be maintained in accordance with the provisions of N.J.A.C. 7:31-3.6, because unlike non-contiguous EHS equipment which may be exempted under N.J.A.C. 7:31-2.19, the equipment that is contiguous to EHS equipment should have mechanical integrity to reduce likelihood of an EHS release. The equipment is exempted from all other provisions of N.J.A.C. 7:31-3. No change based on this comment has been made.

SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A RISK MANAGEMENT PROGRAM

N.J.A.C. 7:31-3.3 Risk management program

68. COMMENT: As given in proposed N.J.A.C. 7:31-3.3(c)2, two commenters request that the Department revise its requirement that a report of book value balance of inventory of each extraordinarily hazardous substance for the past 12 months as reconciled each month with the physical inventory be prepared. (2) (7)

Another commenter asserts that the definition of inventory is inconsistent with N.J.A.C. 7:31-3.3(c)2 in that it requires a daily substance balance and a monthly physical balance reconciliation and requests that it be changed to mean a monthly balance with a monthly reconciliation, which would be adequate for substantiating a site's inventory versus registration quantity. The daily balance requirement is an unwarranted burden without a risk reduction contribution.

An annual book inventory and with an annual physical inventory is widely accepted for commodity type raw materials. (9)

RESPONSE: The Department does not agree on the inconsistency between a daily balance and a monthly reconciliation. Large segments of industry follows this procedure. Without a daily balance, the facility could fall below the reorder point with insufficient lead to replenish before a stock out. The purpose of the inventory is to assure that registration quantities are not exceeded. More importantly, for risk management program purposes, a daily balance helps the registrant determine whether the emergency response plan is compromised. Unless a daily balance is determined or a balance determined after each transaction whichever represents the lesser effort, the registration quantity can be exceeded and the balance will be unavailable on the day an emergency occurs.

69. COMMENT: N.J.A.C. 7:31-3.3(c)10 requires retention of EHS operator training program records for the service period of the employee. The commenter states that mainaining the operator training program records for the service period of the employee is unnecessary and recommends retention for three years. (13)

RESPONSE: In order to determine the root cause for accident investigations, to conduct audits on the effectiveness of the operator training program, and to conduct audits on each employee, records covering the service period of the employee are needed. Registrants in general have already been handling their documentation in this manner. Therefore, that retention period is warranted. No change based on this comment has been made.

N.J.A.C. 7:31-3.4 Safety review of new and existing facilities

70. COMMENT: The commenters supported the replacement of "state of the art" reviews with design criteria reviews at N.J.A.C. 7:31-3.4(a) and (b)1. (2) (9)

RESPONSE: The Department thanks the commenters for their positive comment.

71. COMMENT: N.J.A.C. 7:31-3.3(c)20 requires retention of maintenance records for the service life of the EHS equipment. The commenter states that maintaining the preventive maintenance records for the service life of the EHS equipment is unnecessary and recommends retention for five years. (13)

RESPONSE: In order to perform a reliability study to determine the preventive maintenance required and to determine the root cause for accident investigations, the complete history for the equipment is needed. Therefore, the service life retention period is warranted. No change based on this comment has been made.

72. COMMENT: Two commenters state that the Department should continue the application of the requirement for annual safety review at N.J.A.C. 7:31-3.4(d) to any EHS equipment which contains or has the potential to contain one or more times the EHS registration quantity. The requirement for an annual safety review at N.J.A.C. 7:31-3.4(d) of any equipment handling any quantity of EHS is unwarranted because the requirement will not result in the improvement commensurate with risk management. (2) (9)

RESPONSE: The Department has clarified the definition of EHS equipment to apply to any equipment in registered EHS service regardless of the quantity. The definition of EHS equipment has been changed to mean that equipment within an EHS facility, that is, equipment in EHS service. In addition, the definition of "EHS service" has been changed to mean "... the handling, use manufacture, storage or generation of a registered EHS." A registrant may request exemption of any EHS equipment in accordance with the requirements of N.J.A.C. 7:31-2.19 and 2.20. Therefore, no change has been made to N.J.A.C. 7:31-3.4(d).

73. COMMENT: A commenter asserts that for the Department to add the N.J.A.C. 7:31-3.4(d)1 requirement of reviewing sewer and fire system piping diagrams for the annual safety review may not be appropriate in all cases. Instead, the registrant should determine whether the sewer system and the fire water system meet the definition of "EHS equipment," thereby subjecting it to preventive maintenance and management of modifications. Inclusion of a qualifier in the definition of EHS equipment is requested. (1)

RESPONSE: The Department has discovered that the failure or improper operation with equipment associated with the sewer system and the fire system could directly or indirectly contribute to an EHS accident. The registrant determines the boundaries of these systems that would fall into the definition for EHS equipment based on whether or not their malfunction could result in an EHS release. No change based on this comment has been made.

74. COMMENT: At N.J.A.C. 7:31-3.4(d)1, the commenter suggests striking the word "area" from all references to area electrical classification diagrams because the National Electrical Code recognizes the use of either "bubble" or "area" in classifying hazardous locations. (12)

RESPONSE: The Department concurs with this comment and will remove "area" from all references to area classification diagrams at N.J.A.C. 7:31-3.3(c)15, 3.4(b)1vi, 3.4(d)1, 3.15(a)3vi, 4.5(a)4i and 4.5(a)4iv.

75. COMMENT: The commenter states that in N.J.A.C. 7:31-3.4(d)1 the Department is expanding the TCPA law to include quantities of EHSs below the registration quantity for performance of safety reviews and claims that the Department is exceeding its authority. The Department should not be allowed to change the expressed requirement for a safety review. (17)

RESPONSE: The intent of the saftey review is to include only the EHS(s) that are registered. To improve clarity, the Department has changed the definition of EHS equipment and EHS service. The definition of EHS equipment has been revised to mean, that equipment within a facility in EHS service whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment. EHS equipment includes fire suppression, risk mitigation and EHS release detection equipment. The definition of EHS service has been revised to mean, "the handling, use, manufacture, storage or generation of a registered EHS." Therefore, with these revisions the Department has clarified its intent that the registrant has to perform safety reviews at facilities with EHS equipment only if the registrant is registered with the Department as having greater than or equal to the registration quantity of that particular EHS for the site. However, no additional revisions have been made at N.J.A.C. 7:31-3.4(d)1 regarding this.

76. COMMENT: The Department should delete the requirement for annual safety review at N.J.A.C. 7:31-3.4(d)3 for a registrant to review actual operating conditions of flow, temperature and pressure, process chemistry and raw material feeds and specifications against design document to determine whether actual operating conditions agree with the documents because such a review is normally included in the hazard analysis. Rather, the requirement to indicate that actual condition of

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flow, temperature and pressure, process chemistry and raw material feeds and specifications, meet the design criteria should be moved to N.J.A.C. 7:31-3.4(d)4. (1)

RESPONSE: Although the hazard analysis will include the review of actual operating conditions against equipment design criteria, this frequency will not meet the intent of annual safety review which is to detect and correct unauthorized deviations within the year past. The unauthorized deviations which go undetected for over a year may pose hazards which have a high likelihood of resulting in an EHS release. The intent of the annual safety review at N.J.A.C. 7:31-3.4(d)3 is to ensure by review of documents that no changes have been made to actual operating conditions while the intent of the annual safety review at N.J.A.C. 7:31-3.4(d)4 is to ensure by inspection that actual operating conditions reflect standard operating procedures. Therefore, no change in the requirement for annual safety review has been made.

77. COMMENT: The Department should add a section to address annual safety review findings that are not deviations. At N.J.A.C. 7:31-3.4(d)5, the rule requires the recording of the deviations in the procedures and equipment compared with risk management program documents during an annual safety review. The commenter claims that such findings may not be deviations and gives the example of an item that was always part of the equipment but had not been included in the previous annual safety review findings. (18)

RESPONSE: Adding a section for annual safety review findings which are not deviations will not enhance the implementation of TCPA rules. Documents, such as piping and instrument diagrams and EHS standard operating procedures, should record the designs and procedures at the completion of an evaluation by hazard analysis/risk assessment and the physical facility and real-time activities should conform to the evaluated documents. The purpose of an annual safety review is to find if changes have been made to the physical facility and real-time activities which have not been documented and performed under management of change. Such changes would be unauthorized deviations. Therefore, no change based on this comment has been made.

N.J.A.C. 7:31-3.5 Standard operating procedures

78. COMMENT: The revision to N.J.A.C. 7:31-3.5(b) requiring a "hardcopy" of the SOPs is unwarranted, burdensome, and an unnecessary restriction on the management of operation, and should be deleted. The current wording should remain in order to allow flexibility in the means of document control. This requirement restricts the registrant's ability to utilize new information technologies, such as computerization of documents. For example, ISO requirements mandate the strict control of operating and other documents to insure only the latest version is available. The registrant should be able to demonstrate that the SOP is readily available to the EHS operator when alternate systems are used. Some SOP information, such as batch sequences, times and charges, are maintained in a computer file with a backup universal power supply. This requirement also complicates efforts to maintain up-to-date SOPs. (1) (2) (5) (9) (17) (22)

The Department has no basis nor has given any data to substantiate the opinion that a "hardcopy" maximizes the opportunity for EHS operators to be trained on the SOP. The SOP in a computer file presents an equal training opportunity. (2) (9) (17)

Another commenter stated that a hardcopy of the SOPs available to EHS operators is important because in emergency conditions such as power failures, the computerized SOP would not be available. This commenter suggested providing additional flexibility by requiring a hardcopy for emergency shutdown procedures only. (4)

Another commenter suggested requiring a hardcopy for emergency shutdown procedures only for the case of complete power loss or power backup for computer systems. (5)

RESPONSE: The Department has revised N.J.A.C. 7:31-3.5(b) to require that a hard copy of the portion of the SOPs that contain procedures for emergency shutdown shall be available to the EHS operator at all times. All other sections of the SOPs are still required to be available to the EHS operator at all times. However, the registrant is allowed the flexibility to determine the media used to make all other sections of the SOPs available to the EHS operator, such as computerization. Also, registrants should be prepared to make a complete hard copy of the SOPs available for review by the Department at the time of its inspection.

79. COMMENT: The commenter recommends that the Department should propose amendments to N.J.A.C. 7:31-3.5(c)15 regarding the staffing of waste water treatment facilities utilizing liquid chlorine in light of modern electronic equipment, including programmable logic controllers, computerized alarm sensing and logging systems, automated telephone dialers, and radio paging systems that have eliminated the need for "continuously attended stations." The Department should add an exemption provision based on case-by-case evaluation of each chlorine disinfection system because, without such an exemption, the installation of "State of the art" equipment may be delayed as the major incentive for such installation is reducation of necessary staff. The Department should add a definition for a "continuously attended station" which will include a system of modern electronic equipment in accordance with an approved risk management program. (7)

RESPONSE: The Department does not agree that exceptions should be given to the requirement as per former N.J.A.C. 7:31-3.5(c)15 (proposed and adopted as 7:31-3.5(c)14) that an EHS operator be in attendance at all time at the site, using liquid chlorine out of a storage container.

When liquid chlorine is used, the potential for a catastrophic release is much higher than when used as vapor directly from a container, and also, in general, the usage rate is much higher for liquid chlorine.

N.J.A.C. 7:31-3.6 Preventive maintenance program

80. COMMENT: N.J.A.C. 7:31-3.6(a)2 requires the registrant to insure that only modifications authorized by the responsible manager are made. Several commenters requested that modifications should be made, according to the requirements of N.J.A.C. 7:31-3.15, Management of modifications. Secondly, specific responsible manager authorization should not be a requirement. (2) (9)

RESPONSE: The Department has revised N.J.A.C. 7:31-3.6(a)2 to require that modifications shall be made pursuant to N.J.A.C. 7:31-3.15. The registrant's program of management of change shall require that modifications be authorized prior to implementation at N.J.A.C. 7:31-3.15(a)5.

N.J.A.C. 7:31-3.7 EHS operator training

81. COMMENT: The commenter requests that the Department clarify N.J.A.C. 7:31-3.7(a)4 to mean that procedures to insure work done by contractors to assist as EHS operators should only be required when the registrant anticipates the use of such services. (22)

RESPONSE: A registrant that does not engage or does not plan to engage contractor employees as EHS operators should clearly state this in his risk management program. No change based on this comment has been made.

N.J.A.C. 7:31-3.8 EHS accident investigation procedures

82. COMMENT: The commenters believe that the requirement of N.J.A.C. 7:31-3.8(a)5i for management to "evaluate" the recommendations is unwarranted and infeasible since an evaluation of an accident investigation may conclude that further evaluation is needed rather than decide on actions or alternatives to prevent accident recurrence, and the Department should revise the above paragraph to read as follows:

> "Procedures for management review of EHS accident reports. The review shall result in acceptance of recommendations of actions or alternatives or a determination that further evaluation is required to prevent accident recurrence. . . ." (2) (9)

RESPONSE: The Department recognizes that an evaluation of an accident investigation may conclude that further evaluation is required. The Department's intent is to focus the management review of accident investigation reports on recommendations of actions or alternatives, but not to preclude a conclusion that further evaluation may be needed. Consequently, the requirement is revised to require review which shall result in the evaluation of recommendations of actions or alternatives associated with prevention of accident recurrence.

83. COMMENT: N.J.A.C. 7:31-3.8(b)7ii requires equipment redesign based on consideration of state-of-the-art to prevent recurrence of an EHS accident due to equipment failure. Two commenters stated that unless the release results in an off-site impact greater than five times the ATC, no "state of the art" requirement should be considered. The commenters recommend that the Department delete the wording "state of the art" and replace it with "criteria for design and operation." (2) (9)

RESPONSE: Redesign based on consideration of only criteria for design and operation would not be adequate because the failed equipment already conformed to the criteria for design and operation. Therefore, the Department will continue to require equipment redesign based on consideration of state of the art.

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84. COMMENT: Two commenters recommend that the Department revise N.J.A.C. 7:31-3.8(c)2, which requires update of efforts on risk reductions developed from accident investigations, by replacing the word "monthly" with the word "periodic." Each site should determine, in accordance with its RMP, the frequency that is appropriate for providing "update reports" for implementation status of EHS accident investigation recommendations. (2) (9)

RESPONSE: A monthly update is an appropriate frequency to monitor the implementation status of recommendations resulting from an EHS accident investigation. The report, however, may be a declaration that no milestones were to occur that month and that the implementation is still on schedule.

85. COMMENT: The commenters recommend that the Department revise N.J.A.C. 7:31-3.8(c)3 which requires registrants to record names of staff by replacing the phrase "involved in" with the phrase "who contributed to the EHS accident initiation." This requirement should be reworded so as to require maintaining a record of people that contributed to the "human error" instead of the more general term "involved in" which could include those personnel involved in mitigating or responding to the accident. (2) (5) (9)

RESPONSE: The Department concurs. However, the Department has changed the rule paragraph by replacing the phrase "involved in" with "who directly or indirectly contributed to."

N.J.A.C. 7:31-3.9 Risk assessment program for specific pieces of EHS equipment or operating alternatives

86. COMMENT: Two commenters support the concept of site-specific risk assessments at N.J.A.C. 7:31-3.9, but are greatly concerned that the Department is establishing the new approach too quickly without the benefit of sufficient Department analysis and input from a broad cross-section of risk assessment experts. They believe a Department/industry/third party working group should be established to support the Bureau, and its first task should be evaluation and selection of appropriate risk assessment procedures and methodologies. (2) (9)

RESPONSE: The Department appreciates support for the concept of site-specific risk assessment, but does not believe that it is moving too quickly in this regard. Since the TCPA was signed into law in 1986, mandating the establishment of criteria or quantitative standards for risk, the Department has been extensively reviewing the literature on risk assessments and risk criteria, and consulting with experts in the field from the United States and other countries, notably Canada, the United Kingdom and the Netherlands. While the Department agrees that there are no universally accepted risk methodologies or criteria, a vast body of information is available to at least justify the inclusion in these rules of the criteria to address the need for risk reduction, if not actual acceptable risk levels. The addition of quantitative criteria for addressing risk reduction has been strongly recommended by many registrants, who believed the original rule was vague in its details of how to perform dispersion/consequence and probability analyses. Therefore, the Department believes that it is appropriate at this time to add a quantitative procedure for risk assessment to the rules.

The Department favors continued interaction with industry and the public on the topics of risk assessment and risk criteria, and will endeavor to establish working groups as suggested to study these subjects. The Department also suggests including for consideration by such working groups establishing performance criteria and coordinating USEPA regulations with the TCPA program. The Department intends to establish a TCPA Advisory Committee in the near future to address these goals.

87. COMMENT: Three commenters claimed that to perform risk assessments on all potential EHS release scenarios as required at N.J.A.C. 7:31-3.9, regardless of potential release rate, and at any time EHS equipment is significantly modified will result in an unreasonable burden on the regulated community. The commenters estimated that their facilities would require hundreds of dispersion calculations. They recommended maintaining the release size criteria (five times the registration quantity or greater) for performing risk assessment. They were of the opinion that without such a de minimus quantity, industry and DEPE resources will be incorrectly diverted to low risk scenarios. They suggested that any potential release less than the EHS Registration Quantity be exempt from risk assessments. (3) (17) (23) (24)

Another commenter also stated that compliance with the proposal will require significant expenditures to completely analyze every release scenario and variation thereof, based on quantity or height. (22)

RESPONSE: The Department disagrees. Although the performance of risk assessments on all release scenarios identified by hazard analysis was a part of the interested party draft issued on November 23, 1992, the Department did not include this provision. Instead, the requirement at N.J.A.C. 7:31-3.9(d)5 reduces the required number of dispersion/consequence analysis considerably as compared to the interested party draft. First, all potential releases from a modification are addressed under N.J.A.C. 7:31-3.15(a)1 for "management of modifications (change)," which may often not require dispersion/consequence analysis.

Second, only the maximum quantity/release rate releases in decreasing order that have an off-site impact must be addressed in a risk assessment. It is anticipated that this process will quickly determine all off-site impacts without excessive dispersion calculations. Thirdly, results from previous dispersion analysis may be used in many cases.

The Department has deleted the release size criteria, as explained in the proposal Summary, and replaced them with site/scenario specific criteria, since the release size criteria were not consistent in identifying potential off-site consequences. At times, the release size criteria required analysis that was not needed; at other times, needed analysis was not performed. The new criteria avoid these shortcomings while including all significant potential releases. No change based on this comment has been made.

88. COMMENT: In view of the complexity of the regulations, the short time allowed for comments and given that the USEPA will in the foreseeable future propose the process safety amendment to the Clean Air Act that may materially affect N.J.A.C. 7:31-3.9, Risk assessment, two commenters ask that the Department re-adopt former N.J.A.C. 7:31-3.9(d)1 and rescind the modifications proposed. (8) (22)

Another commenter also suggests readopting the risk assessment rules with no changes because of additional costs borne by registrants to hire specialists. However, the commenter also suggests the alternative that existing risk assessments be "grandfathered" for two more four year cycles of hazard analysis and risk assessment. (14)

RESPONSE: The pending USEPA regulations on accidential release prevention have not as yet been proposed, but communications to date between the Department and the USEPA indicate that their proposal will not contain requirements for risk assessment that will be incompatible with the provisions in N.J.A.C. 7:31-3.9. The Clean Air Act amendments allow the regulations of the individual states to vary from the Federal regulations, as long as they are no less stringent.

The suggestion that existing risk assessments be "grandfathered" for two more four year cycles of hazard analysis and risk assessment is unacceptable because the purpose of the revision of the rules on risk assessment is to correct previous inadequacies. The Department will not allow potentially unidentified risks to remain unaddressed any longer than necessary. No change based on this comment has been made.

89. COMMENT: A commenter asked if the Department in developing N.J.A.C. 7:31-3.9 researched studies that have been done to compare the risk of impact from toxic chemical release to the risk of impact from natural disasters or from normal life activities such as driving a car. The commenter also asked whether any statistics exist that have shown that industry has done its part to reduce risk of chemical release to the public. Finally, the commenter asks when the Department plans to develop an understanding of reasonable risk. (17)

RESPONSE: There are reports of studies and analysis that provide results that compare the risk of impact from chemical releases, natural disasters and normal life activities, notably:

- Lees, Frank P., Loss Prevention in the Process Industry. Vol. 1, Chap. 9, Butterworths, London, 1983.
- Prugh, Richard W., Improved F/N Graph Presentation and Criteria, Journal of Loss Prevention in the Process Industry, volume 5, number 4, page 239, 1992.

While the Department does not have statistical studies on the reduction of risk by industry, risk reduction measures at many registrant sites have been effective in avoiding instances of toxic releases to the public. The Department is charged by the TCPA statute at N.J.S.A. 13:1K-26 to establish criteria or quantitative standards for determining risk. This work is still in progress. In lieu of setting a standard of risk, the program requires registrants to assess risk of potential releases of chemicals which would likely cause acute health effects that would result in death or permanent disability.

90. COMMENT: The Department should provide the registrants with sufficient time to evaluate the complex changes made to the risk assessment program for specific pieces of EHS equipment or operating alternatives at N.J.A.C. 7:31-3.9. Also, the Department should provide

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the registrants with sufficient time to evaluate the guidance document on failure rate and release frequency data which will be used to implement the regulations. (8)

RESPONSE: The Department disagrees with the commenter because sufficient time was given to the registrants in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The guidance document on failure rate data is not part of the rules, therefore, it is not regulatory. The public may, however, continue to comment at any time.

91. COMMENT: A commenter supports the strategy at N.J.A.C. 7:31-3.4(c) requiring that an annual safety review be performed on all existing EHS equipment and procedures, each calendar year and no sooner than six months or longer than 18 months from the previous safety review. However, various safety reviews and hazard analyses are in the process of being conducted and in transition, which conflict with the June 20, 1993 effective date of the rules. (13)

RESPONSE: The Department has modified N.J.A.C. 7:31-3.9(b) so that the five year hazard analysis/risk assessment is performed no sooner than 54 months or no later than 66 months of the previous hazard analysis/risk assessment.

92. COMMENT: Several commenters want the Department to change the frequency for conducting hazard analysis at N.J.A.C. 7:31-3.9(b) from four years to five years, in order to minimize the number of hazard analyses that will be required to meet both the TCPA and the OSHA Process Safety rules. The change will also enhance the compliance of both rules. (1) (8) (10) (20)

RESPONSE: In response to these comments, the Department has revised the frequency of conducting hazard analysis at N.J.A.C. 7:31-3.9(b) from four years to five years. Having implemented the program for five years, the Department has gained enough experience to believe that hazard analysis conducted every five years will not compromise the intent of the Act.

93. COMMENT: The hazard analysis required every four years under N.J.A.C. 7:31-3.9(b) must only meet the program requirements in effect at the time the hazard analysis is conducted. A hazard analysis completed prior to adoption of the proposed regulations should not have to be repeated when the revised regulations become effective. (15)

RESPONSE: The Department agrees. A hazard analysis completed prior to the readoption with amendments will not have to be repeated following readoption. The new regulations for hazard analysis will not be enforced until the first hazard analysis which is due following readoption. Under the proposed re-adoption with amendments, hazard analyses will be due every five years.

94. COMMENT: The requirement for the composition of the hazard analysis team stated at the proposed N.J.A.C. 7:31-3.9(c)2 is an unwarranted limitation on a registrant's ability to transfer personnel. The requirement that certain pesonnel "will be available for the duration of the study" should be revised to state only that "qualified personnel be utilized." This change is valid since the Department will ultimately have the opportunity to review the quality of the risk assessment during its facility audit. (2) (9)

RESPONSE: The Department disagrees that N.J.A.C. 7:31-3.9(c)2 should be revised to replace the statement "will be available for the duration of the study" with a requirement that only "qualified personnel be utilized." The requirement to be available for the duration of the study refers only to the hazard analysis team leader and recorder. It is important that these people be present for the duration of the study. Often there are several participants transferring in and out of the study team. The team leader and recorder are needed to provide continuity to the study to ensure that the study progresses in a logical manner and that items are not missed. This provides a more effective hazard analysis study. No change based on this comment has been made.

95. COMMENT: A commenter stated the proposed N.J.A.C. 7:31-3.9(c)2 unreasonably restricts the registrant's ability to utilize current staff who are trained in hazard analysis methodology and knowledgeable in the technology and operations but lack formal "technical training." This requirement restricts employee participation; the OSHA process safety regulation (1910.119) encourages employee participation. Registrants must be afforded flexibility in personnel to organize, administer and perform the hazard analysis. This prescriptive requirement deviates significantly from the TCPA's successful performance approach. (22)

RESPONSE: The requirement for "technical training" at the proposed N.J.A.C. 7:31-3.9(c)2 pertains only to the hazard analysis team leader and recorder. Persons performing in these capacities need formal technical training to implement their duties effectively. Hazard analysis studies involve detailed discussions and evaluations of a highly technical nature. The leader and recorder must have technical training to understand content of the discussions and evaluations, to guide the direction of the study, to ensure that effective communication is made between the team members, and to accurately and efficiently record all information provided during the study. The Department does not think this requirement restricts the registrant's ability to utilize current staff. Participants are required to have sufficient technical expertise to answer most of the questions raised during the review. This requirement does not restrict participation since registrants may bring in personnel that have the necessary technical expertise for a particular portion of the study. No change based on this comment has been made.

96. COMMENT: A commenter stated the proposed N.J.A.C. 7:31-3.9(c)2 requires two persons to lead a hazard analysis and record the results. There are many circumstances in which the leader can also function effectively as the recorder. Certain software tools allow this efficiency. Many modifications are of limited scope and can be analyzed appropriately with the leader as recorder. (1) (22)

RESPONSE: Too frequently a person trying to perform as leader and recorder of the hazard analysis has not performed adequately, even using available computer software. It is important that the leader is free to think and speak clearly to guide the direction of the discussions without being concerned about accurately recording all information. For the same person to try to perform both duties may greatly slow down the study and may cause crucial information to be missed either by inaccurately recording the information or by causing the flow of thoughts during the discussions to be disrupted. Modifications of limited scope may not require a hazard analysis pursuant to the management of modifications (change) procedures required at N.J.A.C. 7:31-3.15. No change based on this comment has been made.

97. COMMENT: The wording of the proposed N.J.A.C. 7:31-3.9(c)2 should be changed from "to answer most of the questions" to "to address most of the questions." A risk assessment team should have the capability of performing the review, identifying issues of concern and, in many cases, addressing the same. However, in many cases, issues cannot be completely addressed without resource to experts that may not be on the review team; for example, instrumentation, control, environmental, or rotating equipment engineers. To require that "most" answers be addressed by the team is to require that each team consist of every expert disciplines so as to preclude having to go outside the team for issue resolution. In other instance, issues may be raised that might require extensive analysis of several factors to resolve. The risk assessment process should not be burdened with having to conduct same. (2) (9)

RESPONSE: The registrant is allowed to bring in temporary team members during the course of the hazard analysis study to help answer particular questions in specialty engineering areas such as instrumentation, control, environmental, or rotating equipment if additional technical expertise is needed. However, most questions raised should be answered during the review so that few outstanding items remain unresolved and in need of further investigation following the conclusion of the hazard analysis. No change based on this comment has been made.

98. COMMENT: According to N.J.A.C. 7:31-3.9(c)3, results of the study for a unit or system shall be reported in tabular form. The results entered on the table shall include the release point and corresponding scenario of potential basic (initiating) and intermediate event sequences, the corresponding quantity or rate and duration, and the recommended action, if any in terms of equipment or procedure to mitigate the consequences.

During a risk assessment, initial estimates of release quantities and release rates are made and, if necessary, followed by a more rigorous evaluation. It is an unwarranted burden to the risk assessment process to require precise release rates and quantity data. Therefore, the commenters suggest adding "estimated" in the last sentence of N.J.A.C. 7:31-3.9(c)3 for "quantity or rate". (2) (9)

RESPONSE: The Department agrees with the comment and has made the suggested change.

99. COMMENT: As given at N.J.A.C. 7:31-3.9(c)4 "the hazard analysis team shall: i. identify for all EHS equipment, the points of possible EHS releases, the corresponding approximate quantity of an instantaneous EHS release or the rate(s) and duration of a continuous EHS release, either of steady or non-steady state, and corresponding cause of the EHS release. Estimates of the quantity or rate and duration or a release shall be based on actual release mechanisms, and shall reflect

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the operating procedures and mitigation equipment and procedures, planned for new or modified EHS facilities or in place at existing facilities."

A commenter requests that the Department insert "preventive maintenance" in the phrase "operating procedures, preventative maintenance and mitigation equipment." A thorough preventive maintenance program, as required by N.J.A.C. 7:31-3.6, is an integral element of a site's risk management program that leads to reduced risk. As such, estimates of quantity or rate and duration should reflect a site's preventive maintenance program. (2) (9)

RESPONSE: Preventive maintenance will impact the likelihood of equipment failure as well as the quantity or rate and duration of a release and registrant equipment history and reliability studies will reflect this impact. The equipment history containing reliability data should be used in frequency of release occurrence determined in N.J.A.C. 7:31-3.9(f)2. No change based on this comment has been made.

100. COMMENT: Several commenters indicate that there is a numbering error in N.J.A.C. 7:31-3.9(d) where reference is made to (c)2i and (c)2ii but should read (c)4i and 4ii, respectively. Also in N.J.A.C. 7:31-3.9(d)3i where reference is made to (c)2i and (c)2 but should read (c)4i and (c)4ii respectively. (2) (8) (9)

RESPONSE: The Department agrees and has made the numbering changes.

101. COMMENT: A commenter suggests that due to the inherent limitations of air dispersion models, the Department should include in the guidance document the limitations of various commercial air dispersion models. (12)

RESPONSE: The Department intends to provide as suggested ongoing dispersion modeling guidance to the registrants in meeting the rule requirements.

102. COMMENT: No allowance is made in N.J.A.C. 7:31-3.9(d) through (g) for normally unoccupied buffer areas beyond the registrant's boundary. (22)

RESPONSE: The Department recognizes that in specific cases buffer areas may prevent off-site consequences. Such cases should be explained in the risk assessment report as required at N.J.A.C. 7:31-3.9(g)4. Any future change in the use of these unoccupied buffer areas, however, must be addressed in the consent agreement. No change based on this comment has been made.

103. COMMENT: Several commenters suggest that the Department should allow the registrant to choose the air dispersion model which best meets the registrant's needs. (8) (12) (17)

RESPONSE: The Department agrees. At N.J.A.C. 7:31-3.9(d)1, the rule allows registrant to select any atmospheric dispersion model appropriate to the scenario with capability to accept Department's specified dispersion model inputs and outputs. No change based on this comment has been made.

104. COMMENT: A commenter wants the Department to specify air dispersion models such as SAFER, Midas, Safemods, PHAST, Whazan, Chem-Plus, ISCST, SAFETI, DEGADIS, SLAB and other commonly used computer software packages in connection with N.J.A.C. 7:31-3.9(d). (12)

Another commenter wants to know if the Department will specify acceptable air dispersion models. (18)

RESPONSE: The Department specifies the input and output parameters to air dispersion models. The registrant may select any air dispersion model which can accept the specified inputs and outputs. No change based on this comment has been made.

105. COMMENT: A commenter requests that the Department should allow the registrant to "bin" or group release scenarios by release rate or quantity at N.J.A.C. 7:31-3.9(d), in order to minimize the number of dispersion/consequence analysis scenarios. Also, the Department should revise N.J.A.C. 7:31-3.9(e) to reflect the grouping of the release scenarios. (9)

RESPONSE: The registrant can "bin" or group release scenarios by release rate or quantity if the air dispersion parameters are uniform throughout the site. In a situation in which the dispersion parameter such as surface roughness is not uniform throughout the site, grouping of EHS releases will not provide accurate consequence analysis. No change based on this comment has been made.

106. COMMENT: Several commenters suggest that acute toxicity concentration (ATC) whose use is required at N.J.A.C. 7:31-3.9(d)2 as the concentration to define a toxic cloud be reevaluated by the Department. Two reviews which have been published since ATC values were set in 1987 are likely to have more valid data—Emergency Response Planning Guidelines (ERPG) by the American Industrial Hygiene Association which presents three levels of toxic concentration (ERPG-1, ERPG-2 and ERPG-3) and Short-Term Public Exposure Guideline Levels (SPEGLs) by the National Academy of Science. (2) (9) (12)

One of the commenters requested that the Department publish the identity of its sources of data for the ATC value of each extraordinarily hazardous substance (EHS) and questioned whether the use of the mathematical model for the time-concentration relationship of toxicity (Haber's rule), as required at N.J.A.C. 7:31-3.9(d)2ii, is valid for each EHS that it should be applied. (2)

Another of the commenters questioned whether the methodology used at the startup of the TCPA program in 1986 and 1987 to develop ATC values is still valid. (9)

RESPONSE: The information from ERPG and SPEGL reviews has not been used although this fact does not preclude incorporating such data in the future. The Department believes that use of the ATC to define the extent of a cloud which should be prevented is valid because the mortality and injury consequences within such a cloud fits the criteria of a catastrophe included in the TCPA's definition of extraordinarily hazardous substance. Furthermore, since ATC values are based only on lethal concentration values, unlike response planning concentrations, ATCs permit comparison of the lethal effects of a release into the air of one substance with the release of another.

The restricted use of time/concentration formula (Haber's Rule) does not represent a significant problem for review of potential off-site consequences nor does it pose a threat to the public. The Department recognizes that the use of Haber's Rule is not rigorous and believes that the benefit of its simplicity does not compromise its use to determine location downwind of a release cloud which should be prevented. A guidance document with identification of data sources used for ATC values is available from the Department.

107. COMMENT: A commenter asked the following questions regarding the acute toxicity concentration (ATC) applied at N.J.A.C. 7:31-3.9(d)2: How are the values derived? What is the definition of ATC? Have the values been reviewed, recognized and accepted? Are they conservative? Why are the ATC values not in the rules and can these ATC values change? Finally, are there acceptable alternatives to the ATC values? (17)

RESPONSE: The definition of acute toxicity concentration (ATC) was published by the Department in the 1988 rules and in the April 5, 1993 proposal without changes. The Basis and Background published in 1987 with the original proposal of the TCPA rule gives a full explanation of how ATC was established. Based on the lowest of either $LC_{50/10}$, LC_{L0}, or IDLH, ATC is essentially the minimal concentration a chemical in the air likely to cause death to about five percent of a population and would have the potential to have acute health effects on the remaining 95 percent. The definition describes a "toxic catastrophe" that is to be prevented by implementation of the TCPA. It is conservative as necessary to protect the public. The ATC values have not undergone peer review but have been published in a guidance document presented at EPA and local seminars. ATC values have also been published in the Journal of Loss Prevention in the Process Industries, 1988 Vol. 1, July.

The Act requires review of data and changes to ATC values as new information becomes available. The Department continues to review data sources, including Emergency Response Planning Guides (ERPGs) and Short-Term Public Exposure Guidance Levels (SPEGLs). The Department has not used these data sources although that does not necessarily preclude they could not be used in the future.

108. COMMENT: A commenter states that the dispersion analysis parameters specified by the Department at N.J.A.C. 7:31-3.9(d)3 are too conservative and allow for no site specific latitude. (2)

Another commenter states that the specified input to air dispersion models is overly stringent. That the consequence analysis does not allow the use of site specific meteorological data. The commenter suggests that the Department should allow the registrant to use site specific weather data as inputs to air dispersion models. (12)

RESPONSE: The Department disagrees with the commenters because the specified dispersion parameters are site specific and are not overly stringent. The meteorological inputs required at N.J.A.C. 7:31-3.9(d)3 afford consistency of dispersion analysis results from site to site. However, the Department will review the results using any site specific meteorological parameter in addition to the specified input criteria. No change based on this comment has been made.

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109. COMMENT: A commenter requests that N.J.A.C. 7:31-3.9(d)4 and (d)5 be revised to modify and not to eliminate the criteria of five times the registration quantity as the trigger for risk assessment. The commenter suggests that instead the Department should publish a correlation of "EHS quantity" versus the distance between that "EHS quantity" in a facility and the nearest human receptors, which should be used as the criterion. The commenter suggests that the greater the separation distance between the facility and the nearest human receptor, the higher the EHS quantity that will trigger risk assessment and vice versa. (17)

RESPONSE: The Department agrees with the concept that risk resulting from an EHS release is related to quantity or rate of release and distance to a receptor. N.J.A.C. 7:31-3.9 embodies this concept as the criterion for risk reduction. The rule allows the registrant to use site specific conditions such as the distance between the source and the property line to determine if risk reduction is warranted. The rule allows the registrants to explain why certain releases that produce clouds that extend beyond the property line are not addressed in the risk reduction plan. Preparation of a table of EHS quantity versus distance is not practical because of the large number of variations of the parameters that define release scenarios, for example, physical state of the EHS, elevation of the release point, diking to restrain liquid spread, etc. Therefore, no change based on this comment has been made.

110. COMMENT: One commenter requests that only "effective measures at reasonable cost" resulting from state of the art technology search referenced at N.J.A.C. 7:31-3.9(e)1 be required to be implemented. (20)

RESPONSE: The Department recognizes the principle of "effective measures at reasonable cost" as originating from the TCPA, and proposed this clarification to the definition of state of the art technology at N.J.A.C. 7:31-1.5, Definitions, on April 5, 1993. The Department also suggests that the soon to be created Department/industry/third party working group (TCPA Advisory Committee) address the establishment of guidelines to implement this principle of "effective measures at reasonable cost." No change based on this comment has been made.

111. COMMENT: The commenters recommend that the Department revise N.J.A.C. 7:31-3.9(e)1 which requires that EHS releases be studied for mitigation as part of risk assessment, by replacing the phrase "alternate processes" with "process changes." The Department's requirement for consideration of "alternative processes" is an open-ended requirement to perform process development in order to manufacture a facility's product using an entirely different process, which is an unwarranted and economically unjustified requirement. (2) (9)

RESPONSE: N.J.S.A. 13:1K-24 mandates that "alternative processes" be evaluated.

112. COMMENT: According to two commenters, a frequency of release of 10^{-4} per year included at N.J.A.C. 7:31-3.9(f)2 resulting approximately in an individual risk of 10^{-7} per year differs from the usual acceptability for risk in the range for no action as stated by the EPA from 10^{-4} to 10^{-6} per year. (2) (9)

These commenters together with a third commenter believe that there is a need for more detailed analysis justification and understanding of the consequence of the selected risk frequency. (2) (9) (21)

Another commenter supports the threshold release frequency of one event in 10,000 years, and recommends that the State of New Jersey adopt the cutoff frequency of 10^{-4} per year. This commenter states that release frequencies lower than 10^{-4} per year are difficult or impossible to achieve in an operating plant due to common cause (common mode failure) and acts of God (external events) such as earthquakes, etc. (12)

RESPONSE: The Department appreciates the one commenter's support of the threshold release frequency of 10^{-4} per year. A release frequency of 10^{-4} per year translates to an individual risk of approximately 10^{-7} per year depending upon wind speed, stability, direction and other factors, such as indoor concentration attenuation. The actual risk may vary over one or two orders of magnitude. The EPA individual risk range of 10^{-6} to 10^{-4} per year is used for chronic exposure based on a lifetime of 70 years. Comparison of acceptable risk between acute and chronic exposures is not a common practice, but if adjustments were made for time frame, the two risk levels would be comparable at the low end of the range.

A value in the range of 10^{-7} per year for individual risk is reasonable in that it corresponds to the accepted level of risk from acts of nature. Several experts in the field have suggested this level, including those cited in the Summary to the rule proposal. In addition, in the Netherlands, regulations have set the individual risk tolerable level at 10^{-8} per year, and in the United Kingdom level is set at 10^{-6} per year, a value also proposed by an industry/university study in Canada.

The Department has also provided for the avoidance of the need to determine frequencies by allowing the registrant to proceed directly to a state of the art technology search. No change based on this comment has been made.

113. COMMENT: A commenter suggests that the rule at N.J.A.C. 7:31-3.9(f)2 should allow the use of transportation risk analysis estimation methods other than those given in a table in the Source Document for Risk Assessment. (12)

RESPONSE: The TCPA program does not regulate EHSs while in transit. The transportation-related data in the source document are included only because the cited table containing many other TCPA-related data has been republished *in toto* by permission from the author.

114. COMMENT: A commenter suggests that the rule should allow the use of human error reliability estimation methods and equipment reliability data, other than those given in the Source Document for Risk Assessment, referenced in the Summary of the proposed rule readoption with amendments. (12)

RESPONSE: The rule allows the use of any reliable database. The Source Document for Risk Assessment only references examples that may be used. As such it is a non-exclusive list. No change based on this comment has been made.

115. COMMENT: A commenter suggests that the types of releases at N.J.A.C. 7:31-3.9(f)2 should be categorized into: worst possible, worst credible and worst likely, and the likelihood of a release for each be quantified. A dispersion/consequence analysis should only be performed on a release scenario where the likelihood of a release is, say, greater than 1×10^{-4} per year. (18)

RESPONSE: Whether or not releases are "worst possible," "worst credible" or "worst likely" can only be determined by quantitative methods and some definition or criteria for each category would be needed. The Department has established criteria that determine not only "worst cases" but all cases that may result in death or permanent disability. The criteria are based first on potential consequences, that is, whether or not a concentration criterion reaches the site boundary, and second on likelihood or frequency, that is, whether a release is greater than 10^{-4} per year.

If only the more frequent releases, that is, those greater than 10^{-4} per year, were addressed in dispersion/consequence analysis, then some consequence scenarios would not be addressed. No changes based on this comment have been made.

116. COMMENT: A commenter suggests that the Department at N.J.A.C. 7:31-3.9(f)2 should recognize that the EHS release frequency of 1×10^{-4} per year is not an isolated component point estimate. The overall EHS release frequency should reflect the failure rate of individual components as well as other factors that may contribute to it. The commenter feels that the Department should encourage the use of data that represent realistic release scenarios whenever possible. The commenter gives examples where increase in equipment inspection, testing and unavailability when used to modify industrial generic failure rate data, will result in lower EHS release frequency. The commenter suggests that the Department should allow the registrant to take credit for existing RMP programs when determining the overall EHS release frequency of 1×10^{-4} per year. Also, the registrant should be allowed to take credit for other plant operational conditions such as increase in equipment inspection, testing and unavailability. The commenter recommends amending N.J.A.C. 7:31-3.9(f)2i and 2ii to include such credits. (9)

RESPONSE: The Department encourages registrants to use site specific failure rate data which will take into account the situations mentioned in the examples cited in the comment above, especially from equipment reliability studies at the site. The EHS release frequency of 1×10^{-4} per year at N.J.A.C. 7:31-3.9(f)2i may result from a single event or multiple events. Where site specific data do not exist, a registrant may adjust the generic failure rate data but such adjustment must be justified. In determining the EHS release frequency, the registrant may take credit for its existing RMP program as reflecting data on equipment reliability and human error studies at the site. No change based on this comment has been made.

117. COMMENT: To clarify that only certain modifications can trigger the need for a risk assessment, this commenter recommends that the Department should revise the wording of risk assessment report at N.J.A.C. 7:31-3.9(g), by adding "of EHS equipment" to modification. (9)

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Another commenter suggests adding "required" to modification to clarify that only certain modifications can trigger the need for a risk assessment. (2)

RESPONSE: The Department has revised the wording of the risk assessment report request at N.J.A.C. 7:31-3.9(g), to be consistent with the risk assessment requirements at N.J.A.C. 7:31-3.9(a) and (b) to read "for each new EHS facility, each new EHS operating alternative or each required modification to EHS equipment and procedures, identified at N.J.A.C. 7:31-3.15 or for existing EHS equipment or operating alternatives . . . ."

118. COMMENT: One commenter does not believe that a risk assessment required at N.J.A.C. 7:31-3.9 on existing equipment will provide a reduction in risk commensurate with the time and cost required to perform it, and believes that a hazard analysis on existing equipment is sufficient to provide a safe working environment for all employees. (20)

RESPONSE: A hazard analysis on existing equipment may be sufficient to provide a safe working environment for all employees at a site, but is generally not sufficient to ascertain off-site risks to the community surrounding the site. No change based on this comment has been made.

N.J.A.C. 7:31-3.10 Emergency response program

119. COMMENT: Some commenters stated that positive changes regarding emergency response at N.J.A.C. 7:31-3.10 include the recognition of two response levels or groups and the clarification of the frequency and participation of training requirements. (2) (9)

RESPONSE: The Department appreciates the positive comment.

120. COMMENT: The commenters recommend that the Department revise N.J.A.C. 7:31-3.10(a)2ii and 3vii covering training for emergency response by replacing the phrase "EHS release" with "EHS accidental release" to reflect the type of release that is the subject of the Emergency Response Program. (2) (9)

RESPONSE: The Department concurs. The rule has been changed at N.J.A.C. 7:31-3.10(a)2ii and 3vii to replace the phrase "EHS release" with "EHS accidental release."

121. COMMENT: A commenter suggests that N.J.A.C. 7:31-3.10(a)3 should be clarified as to whether each member of the site wide and the EHS facility emergency response teams has to undergo the required emergency response training. (18)

RESPONSE: Each individual member of the site wide and EHS facility emergency response teams is required to receive the training specified at N.J.A.C. 7:31-3.10(a)3 as it applies to his or her function of the team. No change based on this comment has been made.

122. COMMENT: EHS operators should be excluded from the exercises required at the proposed N.J.A.C. 7:31-3.10(a)4i. Some facilities work rotating shift schedules attending to continuous 24 hour per day operations which cannot be left unattended. It is very difficult and costly to coordinate these EHS operators' participation in full scale exercises. Furthermore, since these operators are not expected to respond to potential EHS releases, requiring them to participate in these exercises would be of limited value. Responses to potential EHS releases at these facilities are performed by emergency response squads whose members have been trained and equipped for EHS responses. These individuals are the ones who already participate in, and benefit from, EHS response drills. (3)

The training required of EHS operators including emergency process shutdown procedures and notification procedures must be addressed in the site's EHS operator training program. (3)

RESPONSE: N.J.A.C. 7:31-3.10(a)4i has been revised to clarify that the registrant shall demonstrate the emergency response plan in at least two exercises each calendar year at each registered facility. For any two of these exercises, the registrant must assume that the ATC of the EHS extends beyond the site boundary, and the site emergency response team must participate at a strength appropriate to demonstrate the plan. This version also clarifies the Department's intention of demonstrating the implementation of the registrant's emergency response plan in two exercises each calendar year at each registered facility and not necessarily the participation of every individual EHS operator and emergency response team member. The registrant is allowed to determine which shift out of its operating schedule is to perform the EHS emergency response exercises.

However, the Department continues to maintain that it is important for EHS operators to participate in the EHS emergency response exercises. In the definition of "EHS facility emergency response team" it is stated, "The specific duties for which an EHS operator is responsible as part of the EHS facility emergency response team may be limited to emergency shutdown, notification of an emergency to supervisors or the site emergency response team, and use of emergency protective equipment." EHS operators will play some role in an actual EHS emergency, and these roles must be demonstrated in an exercise.

Therefore, N.J.A.C. 7:31-3.10(a)3 requires that every individual EHS operator receives the appropriate training for the functions performed as part of the EHS facility emergency response team. No change based on this comment has been made.

123. COMMENT: The current rule at N.J.A.C. 7:31-3.10(a)11ii and the proposed revision at N.J.A.C. 7:31-3.10(a)4i require that TCPA emergency response exercises involve initiation of the site's emergency plan for a registered EHS chemical incident. Emergency response exercises should be allowed to be based on releases of hazardous materials other than registered EHS chemicals. Drills should also be allowed for EHS chemicals that are maintained below their registration quantities. These options will add diversity to drill scenarios and heighten onsite and offsite emergency responder's awareness of the various hazardous materials at our facilities. Additionally, facilities are required to conduct joint emergency drills under both SARA and RCRA regulations. Therefore, the two annual TCPA exercises should be flexible enough to fulfill all regulatory requirements of SARA and RCRA. (3)

RESPONSE: Performing emergency response exercises based on EHS release scenarios is necessary to meet the intent of the Act. Various chemical compounds present different release scenarios due to their particular physical properties and the way that each is used, handled, or stored. Therefore, the emergency response actions necessary to contain or mitigate a release may also vary depending on the chemical. The Department does not accept the suggestion for substituting materials other than the registered EHSs for the performance of the EHS emergency response exercises.

N.J.A.C. 7:31-3.10(b)10iii requires that the local emergency planning committee (LEPC) coordinator must only be notified of the registrant's yearly schedule of emergency response exercises. Therefore, the LEPC and other local authorities may, at their discretion, participate in EHS emergency exercises or in emergency exercises based on the release of other hazardous materials.

Registrants are allowed to expand the scope of the EHS emergency response exercise in order to meet other additional regulatory requirements if possible, but the minimum requirements of N.J.A.C. 7:31-3.10(a)4 must still be met. No change based on this comment has been made.

124. COMMENT: The number of emergency response exercises required under N.J.A.C. 7:31-3.10(a)4i and ii is excessive. For example, a site with three EHS facilities (three EHS facility emergency response teams) and a site wide emergency response team would require a total of six emergency exercises (two involving off-site impact and all of which could be tabletop), and N.J.A.C. 7:31-3.10(a)4ii would require an additional three live (non-tabletop) exercises. This would result in an annual total of nine exercises. If the requirements of N.J.A.C. 7:31-3.10(a)4i include the requirement of (a)4ii, the total would be six exercises, three of which could be tabletop. Addition of the word "including" to the end of (a)4i would make this a more reasonable requirement. (1)

Another commenter stated that it was their understanding that the requirement for two exercises per year applies to the facility and site emergency response teams, not to each of the individuals who could potentially participate on these teams. (22)

RESPONSE: The rule has been revised at N.J.A.C. 7:31-3.10(a)4i to clarify and emphasize that the registrant shall demonstrate the emergency response plan in at least two exercises each calendar year at each registered facility. For any two of these exercises, the registrant must assume that the ATC of the EHS extends beyond the site boundary, and the site emergency response team must participate at a strength appropriate to demonstrate the plan. As an example, if there are three registered facilities on a registrant's site, two exercises must be performed each calendar year at each for a total of six. In any two of these six exercises, the registrant must assume that the ATC of the EHS extends beyond the site boundary, and the site emergency response team must participate. One of these must be a non-tabletop exercise. This revision clarifies the Department's intention of demonstrating the implementation of the registrant's emergency response plan in two exercises each calendar year at each registered facility and not necessarily requiring the participation of every individual EHS operator and emergency response

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team member. The registrant is allowed to determine which shift(s) out of its operating schedule is to peform the EHS emergency response exercises.

It is required at N.J.A.C. 7:31-3.10(a)4ii that a minimum of one exercise other than a tabletop exercise each calendar year be performed at each registered facility. This requirement specified the types of exercises required at N.J.A.C. 7:31-3.10(a)4i, and is not in addition to them. For example, if there are three registered facilities on a registrant's site, two exercises must be performed each calendar year at each for a total of six. In any two of these six exercises, the registrant must assume that the ATC of the EHS extends beyond the site boundary, and the site emergency response team must participate. Of the two exercises performed each calendar year at each registered facility, a minimum of one exercise must be a non-tabletop exercise. Therefore, the minimum total number of exercises required at this example site is still six. No changes have been made at N.J.A.C. 7:31-3.10(a)4ii based on this comment.

125. COMMENT: A commenter asked why N.J.A.C. 7:31-3.10(a)4ii requires two exercises each year in which it is assumed that the ATC of the EHS extends beyond the site boundary. The commenter suggested this should be site specific and should only be required if a credible scenario can be determined. (17)

RESPONSE: It is important that registrants perform EHS emergency response exercises with the assumption that the ATC of the EHS extends beyond the site boundary. This assumption ensures that all aspects of the registrant's emergency response plan will be exercised. To require these exercises only for high probability scenarios is not acceptable because the registrant must prepare for the eventuality of an EHS release which has an ATC concentration beyond the site boundary, regardless of the likelihood. No change based on this comment has been made.

126. COMMENT: It is required at N.J.A.C. 7:31-3.10(a)5iii that the names of all participants in a site wide emergency response exercise be included in the emergency response exercise written assessment. For a large organization this is difficult because of shift personnel and also the number of auxiliary people involved in the exercise. The primary purpose of the exercise is to test the functional aspects of the various positions in the emergency response organization. Deficiencies of individual actions will be brought out in the critique session that follows the exercise. This requirement is not worthwhile because there is no requirement for each member of the site-wide team to participate in a TCPA drill every year, and it should be deleted to reduce paperwork. (10)

RESPONSE: The names of all participants in each EHS emergency response exercise in the written assessment of the exercise will remain in the requirement. This listing of participants in the exercise is useful for future exercise planning purposes and as a means of demonstrating that the appropriate personnel filling the necessary emergency response positions as defined in the registrant's emergency responsde plan have participated in the exercise. This requirement is not an undue burden, nor does it create excessive additional paperwork for the registrant.

127. COMMENT: The commenters recommend in reference to the statement in proposed N.J.A.C. 7:31-3.10(a)5iv, covering assessment of the emergency response plan, that the requirement to assess "the adequacy of treatment of exposed personnel at the site and at offsite facilities," be either deleted, or revised to delete "at offsite facilities." These facilities are generally hospitals and registrants are not in a position to assess adequacy of treatment. This could also raise issues of hospital liability. In addition, it could deter the willingness of the hospital to participate in emergency care necessitated by an accidental EHS release. (2) (9).

RESPONSE: The Department disagrees with the commenters. Assessment of its emergency response plan by a registrant is required so that the needs of a registrant in an emergency are best communicated to off-site facilities. It is not required that registrants critique the off-site facilities themselves.

128. COMMENT: A commenter requests relief from being required to provide detailed accident information updates to the Department's emergency communications center at N.J.A.C. 7:31-3.10(b)7iv(3). The commenter believed the registrant can not be expected to develop the information in the limited time available and requests, instead, a rule change so that the registrant need only provide the Department with current available information. (2)

RESPONSE: The Department disagrees with the comment because an effective emergency response team should have had sufficient time to establish most of the information required at N.J.A.C. 7:31-3.10(b)7iv(3). There remains sufficient time after the site's initial notification to the Department for the receipt of this information by the site emergency coordinator. No change based on this comment has been made.

129. COMMENT: The statement in N.J.A.C. 7:31-3.10(b)7iv(3) "Location of the point of EHS release, a description of the source, cause and type of EHS release, quantity and concentration of the EHS released, and whether the EHS release is of a continuing nature" should be revised to add the term "if known." The limited time available does not allow development of this information and currently available information should be indicated. (9)

RESPONSE: Proposed N.J.A.C. 7:31-3.10(b)7iv has already been revised to replace the need for a second call to the Department with a requirement for the registrant to be prepared to provide the Department's emergency communication center with update of available information. The intended procedure is for the Department's emergency response duty officer to return the call to the site, at which time the registrant should be prepared to provide this information regarding the EHS release. That information currently available after due diligence inquiries should all be transmitted to the Department, providing a best accurate description of the incident, including the point of release, the cause and type of the EHS accident, quantity and concentration of the release, and whether the release is of a continuing nature, as it is known at that time.

130. COMMENT: In proposed N.J.A.C. 7:31-3.10(b)7v, it is stated: "Such incidents shall be recorded following the procedures established at N.J.A.C. 7:31-3.8, EHS accident investigation procedures." The Department used the term "incidents" and therefore a definition should be included in N.J.A.C. 7:31-1.5. (20)

RESPONSE: The Department agrees with the intent of the comment. The word "incidents" has been replaced with the word "accidents" at N.J.A.C. 7:31-3.10(b)7v.

131. COMMENT: A commenter expressed concern with the statement, "not reportable under any other State or Federal rule" at the proposed N.J.A.C. 7:31-3.10(b)7v. This requirement to report under any other rule has no bearing upon the TCPA reporting requirement. Even if a release is reportable under the auspices of another rule but in itself does not represent a TCPA hazard, why require its reporting as per the TCPA rule? The commenter could not determine the basis for requiring a registrant to report a release which does not represent a TCPA hazard and asked the Department to clarify its intent with regard to this requirement. (9)

RESPONSE: The statement "is not reportable under any other State or Federal rule" was included at N.J.A.C. 7:31-3.10(b)7v only as a reminder to a registrant that even though an accidental release of an EHS may not be required to be reported as part of the TCPA rule, it may be required to be reported pursuant to other State or Federal regulations. The language of the rule has been revised to clarify that at N.J.A.C. 7:31-3.10(b)7v does not affect any other State or Federal notification requirement.

132. COMMENT: A commenter expressed concern for the need to report EHS accidental releases which are responded to by an "EHS facility's emergency response team," as required at the proposed N.J.A.C. 7:31-3.10(b)7v. Since it is understood that a facility's EHS operator(s) is a member of the EHS facility's emergency response team, the Department should clarify that his or her functioning as an operator to shut down or secure EHS equipment does not constitute activation of the facility emergency response team. The Department should also clarify the issue surrounding the EHS operator and his or her actions with regard to the possible activation of the facility's emergency response team. (2) (9)

RESPONSE: N.J.A.C. 7:31-3.10(b)7v has been revised to replace the proposed wording of "does not activate the site's or EHS facility's emergency response team" with "does not activate the registrant's emergency response plan." This revision focuses on the activation of the registrant's emergency plan rather than the actions of individual EHS operators.

However, pursuant to N.J.A.C. 7:31-3.10(b)7iii(1), a registrant is still required to notify the Department of an alert or that an EHS accident is imminent and will probably occur.

133. COMMENT: Two commenters have suggested that in N.J.A.C. 7:31-3.10(b)7v there should be clarification of the meaning of off-site impact. (2,9)

RESPONSE: While the TCPA program is primarily concerned with accidental releases with the potential to cause death and permanent

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disability, the Department is mandated by N.J.S.A. 26:2C-19(e) and N.J.S.A. 58:10-23.11e to require the reporting of releases and discharges. Thus, a release or discharge triggering the reporting requirements of the above cited statutes and their administrative rules will define what must be reported once the release goes off-site.

134. COMMENT: At N.J.A.C. 7:31-3.10(b)10iii, the notification of the LEPC coordinator if the registrant's schedule of two emergency response exercises per year is required.

Several commenters request that the Department clarify this requirement so as to be applicable to an actual state-wide emergency response drill and not a tabletop exercise. It should be at the discretion of an individual registrant whether or not to notify the LEPC or perform a tabletop, site or facility drill. Notification of the LEPC coordinator should be limited to two exercises for the site wide emergency response team only. (2) (9) (22)

RESPONSE: The Department does not agree with the comment. Notification of the LEPC coordinator should be part of the "practice" derived from tabletop implementation. No change based on this comment has been made.

N.J.A.C. 7:31-3.15 Management of modifications (change) to EHS equipment and procedures

135. COMMENT: Modifications to SOP(s) are required to be made in accordance with N.J.A.C. 7:31-2.11 under the existing regulation. As proposed, N.J.A.C. 7:31-2.11 references N.J.A.C. 7:31-3.15. A suggestion was made to change the reference found in N.J.A.C. 7:31-3.5(d) to N.J.A.C. 7:31-3.15 directly. (22)

RESPONSE: The Department agrees with this comment. N.J.A.C. 7:31-3.5(d) has been changed to reference N.J.A.C. 7:31-3.15 directly.

136. COMMENT: Several commenters state that in N.J.A.C. 7:31-3.15 the proposed "management of change" procedure is too specific and represents Department micromanagement. A more general approach is recommended. (2)(9)(20)(23)

RESPONSE: The proposed new "management of change" procedure is not overly prescriptive. The procedure is necessary to prevent potential catastrophes in accordance with the intent of the Act. No change based on this comment has been made.

137. COMMENT: The commenters state that while it is desirable and the usual practice to approve of changes prior to implementation, flexibility should be allowed to "pre-authorize," prior to an explicit review (including updating of documents in accordance with N.J.A.C. 7:31-3.15(a)5), "minor" types of off-hour changes as identified by the registrant RMP. Such changes would then be subsequently reviewed and authorized during regular working hours when appropriate personnel are available. The proposed changes would allow for operating flexibility and minimization of facility downtime while sustaining proper and adequate safeguards. Additionally, the registrant should be afforded the opportunity to define levels of authorization below the responsible manager, especially when the change is minor and well understood. The responsible manager should affirm performance of the registrant's program requirements prior to the documentation being considered complete. (2)(9)(22)

RESPONSE: Changes to EHS equipment anticipated in advance as likely, particularly during off-hours, should be included in the EHS standard operating procedure under normal or abnormal conditions. Such "preauthorized changes" should be identified as "temporary changes" to be discontinued after a predetermined period after which they shall be identified as "permanent changes" and are subject to the requirements of N.J.A.C. 7:31-3.15. Management of modification (change.) No change based on this comment has been made.

138. COMMENT: N.J.A.C. 7:31-3.15(a)5i requires the responsible manager to sign all reports. Several commenters recommend that the Department modify this subparagraph by deleting the phrase "the responsible manager." Registrants should only be required to establish an approval and review schedule. (2)(9)(10)

RESPONSE: The existing regulations, under N.J.A.C. 7:31-3.6(a)2, require that all modifications be approved and authorized by the responsible manager. It is necessary for someone who possesses sufficient authority and the necessary technical background to effectively carry out the modification. To facilitate the implementation of this requirement, the Department has amended proposed N.J.A.C. 7:31-3.15(a)5i to require the responsible manager or his or her designee as indicated in the RMP to sign the reports.

139. COMMENT: Proposed N.J.A.C. 7:31-3.15(a)5ii imposes an unreasonable burden on the responsible manager to approve and sign reports of risk assessment of a major modification. Several commenters cannot find a basis of fact or justification for a more stringent requirement to be stipulated in this section. The Department should therefore delete this requirement. (2)(9)

RESPONSE: The Department has amended N.J.A.C. 7:31-3.15(a)5ii to clarify that the responsible manager need sign the report of risk assessment of a major modification only to affirm that the registrant has performed modification management activities (required at N.J.A.C. 7:31-3.15(a)1,2,3 and 4) rather than to approve the risk assessment, which was not intended originally. The responsible manager alone should be the affirming person since a "major modification" is being implemented.

140. COMMENT: The commenters recommend that the Department should revise N.J.A.C. 7:31-3.15(b) to exempt the modification based upon the findings of a safety review from the requirements of N.J.A.C. 7:31-3.15(a)5ii. (2)(9)

RESPONSE: The Department does not agree that the modification from a safety review needs to be exempt from N.J.A.C. 7:31-3.15(a)5ii since most of the modifications resulting from safety review will be covered by N.J.A.C. 7:31-3.15(a)5i as "minor," that is updating the documents and procedures and ensuring the integrity of EHS equipment and services. However, in rare instances, the modifications from safety review may be subjected to the requirement of N.J.A.C. 7:31-3.15(a)5ii.

141. COMMENT: As stated by the commenter, N.J.A.C. 7:31-3.15(a)5ii could require a risk assessment for any change deemed complex or significant. This appears to conflict with N.J.A.C. 7:31-3.9 requirements that indicate risk assessments are to be tied to potential off-site exposure. The Department should clarify the intent of these two sections, and allow the management of change procedures to decide when a risk assessment is invoked. (8)

RESPONSE: The Department agrees with this comment. The language will be simplified to improve clarity. "More complex or significant" has been changed to "major" which at N.J.A.C. 7:31-3.15(a)1 is defined as having an off-site impact as determined by criteria based on dispersion analyses in accordance with N.J.A.C. 7:31-3.9(d). Thus, results of prior dispersion analyses may be correlated with downwind distance by the registrant which the registrant may use to apply the criteria to determine the impact of a modification.

142. COMMENT: Proposed N.J.A.C. 7:31-3.15(a)6 requires an implementation schedule to be established for key tasks. Several commenters requested deleting this requirement since all key tasks must be completed prior to implementing a change. (1)(2)(9)(20)(22)

RESPONSE: All tasks whether they are an update of an existing document, creation of a document, training or implementation of any other risk reduction measures are important. Therefore, the Department has amended proposed N.J.A.C. 7:31-3.15(a)6 to require the registrant to: "Complete all tasks prior to implementing the change."

143. COMMENT: Proposed N.J.A.C. 7:31-3.15(b) exempts from further analysis all recommendations resulting from the findings of an EHS accident investigation and risk assessments on EHS equipment. The commenter states that some EHS equipment is not continually in EHS service, and in fact is not in EHS service the majority of the time it is on line. The commenter requests that recommendations from all investigations, whether an EHS or non-EHS accident be exempt from further analysis. (20)

RESPONSE: The Department does not concur with this comment. Only EHS accidents are subject to these rules. Therefore, all other investigations cannot be exempt from further analysis. The registrant which temporarily discontinues use of a particular EHS at particular EHS equipment must meet the requirements of N.J.A.C. 7:31-3.16, Obligations upon temporary discontinuance of EHS use, storage and handling. No change based on this comment has been made.

144. COMMENT: N.J.A.C. 7:31-3.15(c) should be deleted or modified. This requirement restricts the implementation of the registrant's risk management program, since it specifies the training necessary for line organization staff. Specifying training is not necessary since changes must be handled case by case. (1)(2)(9)(22)

RESPONSE: The Department has witnessed lapses in implementation when changes have occurred in risk management administration. N.J.A.C. 7:31-3.15(c) was added to insure each element's implementation.

The Department has amended N.J.A.C. 7:31-3.15(c) to require a registrant's program of management of change to set forth the qualifications of persons who would implement individual elements of the site risk management program. The changed provision is as follows: "It shall set forth for each position the qualifications of the successor and the requirements for a transition period."

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N.J.A.C. 7:31-3.16 Obligations upon temporary discontinuance of EHS use, storage and handling

145. COMMENT: One commenter indicated that in N.J.A.C. 7:31-3.16(a)1, 2 and 3 there should be added the word "back" to the end of each paragraph so that the sentence ends "bringing the EHS back on site." (2)

RESPONSE: The Department agrees with the commenter and has added "back" to paragraphs 1, 2 and 3 of N.J.A.C. 7:31-3.16(a).

N.J.A.C. 7:31-3.17 Contractors and contractor employers

146. COMMENT: A commenter asks why the Department is adding OSHA requirements for contractors to the TCPA regulations under N.J.A.C. 7:31-3.17 since it is redundant to have the same requirements and this redundancy results in additional paperwork and cost. (17)

RESPONSE: The Department disagrees. The TCPA regulates registrants in New Jersey who are not covered by the OSHA regulations. Also, for registrants who are covered by both programs, most of the contractor paperwork that is prepared for one program can be used for the other.

147. COMMENT: A commenter requested that the Department revise N.J.A.C. 7:31-3.17(c) to include only those activities performed by the contractor and/or its employees assisting during the EHS emergency response accident while the threat of a catastrophic release exists. (22)

RESPONSE: The Department agrees with the comment and has revised N.J.A.C. 7:31-3.17(c)3 by eliminating the words "or cleanup of the released EHS."

148. COMMENT: Two commenters recommend that the Department modify N.J.A.C. 7:31-3.17(e)5 to allow the registrant at its own discretion to evaluate the contractors fulfillment of their obligation, or to provide some or all of the requisite training to the contractor's employees. (2)(7)

RESPONSE: The Department disagrees with the recommendation because the contractor's periodic evaluation of performance and training requirements are not overly prescriptive. The procedures are mandated to ensure registrant compliance at N.J.A.C. 7:31-3.17(e)5. No change based on this comment has been made.

149. COMMENT: A commenter believes the contractor's training requirements are too specific at N.J.A.C. 7:31-3.17(d) and represents Department micromanagement. He recommended a more general approach. (23)

RESPONSE: The Department disagrees that the requirements for the contractor's training are overly prescriptive. The requirements match the intent of Federal Occupational Safety and Health Administration (OSHA) regulations on process safety management (PSM) and mandates key items of the registrant's existent risk management program to ensure an appropriate level of training is received by the contractor and by any of his employees as a means of reducing risk.

SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

N.J.A.C. 7:31-6.4 Civil administrative penalty determination

150. COMMENT: The litany of fines at N.J.A.C. 7:31-6.4 is of concern since the sponsor of the legislation did not intend the regulatory program to be a "cash cow." The Department should not cite facilities which have made significant strides towards the goal. The practice of citation is a significant deterrent to the cooperative effort needed if the future requirements of OSHA and EPA are to be assimilated in New Jersey. (21)

RESPONSE: The Toxic Catastrophe Prevention Act at N.J.S.A. 13:1K-30, "Violations: penalties," mandates liability to civil administrative penalties for violations of provisions of the Act, in amounts up to $10,000 for the first offense, not more than $20,000 for the second offense, and up to $50,000 for the third and each subsequent offense. Accordingly, the Act as written provides for significant penalties for violation of the regulations. The penalties imposed by the Department in enforcing the regulations have been fair and equitable and in accordance with the nature of the violations. The Department recognizes the significant strides made by facilities in achieving the goals of the program and has worked closely with registrants in assisting them in achieving these goals. Considerable cooperative effort has been extended by both industry and the Department. Violation penalties have not been inconsistent with achieving these goals. The penalties collected as a result of violations are not received by the Department, but are deposited in the State Treasury General Funds and as such, there is no monetary incentive to assess penalties. Moreover, any penalties collected are not reflected in the TCPA budget.

151. COMMENT: A commenter noted that the many possible fines at N.J.A.C. 7:31-6.4 for "failure to satisfy" the literal interpretation of the TCPA rule does not conform to the spirit of the TCPA. The "Act" was designed to provide an "evergreen" program of improvement to prevent significant environmental releases. However, Department inspections are conducted with the view that anything less than perfection is citable. Furthermore, hand drawn process flow diagrams (PFDs), which were accepted during the inital inspection, are considered inadequate and only computer aided drafted (CAD) PFDs accepted. The commenter acknowledged the improved appearance of the CAD diagrams, but noted, they may do little to assist the chemical operators in performing their jobs. (21)

RESPONSE: The Department disagrees with the comment. Process flow diagrams (PFDs) that are legible and that meet the informational requirements of the rule at N.J.A.C. 7:31-1.5 are acceptable. However, there are cases where Consent Agreements have been executed by the Department where a registrant commits to prepare PFDs of high draftsmanship, but only with the consent of the registrant. Moreover, the Department believes enforcement is performed reasonably.

Some of the guiding principles of the Department include consistently applying environmental laws and standards in a fair, timely and predictable manner; providing clear, prompt and fair guidance and decisions; and basing Department standards, decisions and activities on sound science. These principles have all been followed during the review of registrant's risk management programs.

152. COMMENT: The Department shouldn't consider failure to report a change in the responsible manager at N.J.A.C. 7:31-6.4(d)9a and failure to report any other changes at N.J.A.C. 7:31-6.4(d)9c as violations which are subject to penalties. (1)

RESPONSE: The Department believes that penalties for such violations are necessary to ensure the compliance of the TCPA rules. The responsible manager is responsible for implementation of the registrant's risk management program and the Department needs updated information on this key position. It is essential that the registrant identify the person holding this position. Therefore, no change has been made to the violations and penalties resulting from these failures.

Summary of Agency-Initiated Changes:

As the result of the Department's review of the proposed rules, the following changes were made to correct typographical errors and incorrect references, or to clarify the meaning of the rules to avoid misunderstandings:

1. In N.J.A.C. 7:31-2.10, New EHS facilities, for clarity, N.J.A.C. 7:31-2.10(b) has been recodified as (a)5; N.J.A.C. 7:31-2.10(c) has been recodified as (b); and N.J.A.C. 7:31-2.10(d) has been recodified as (c).
2. In N.J.A.C. 7:31-2.10(c) (as recodified from previous (d)), the phrase "or consent agreement addendum" has been added to complete the existing phrase "items of the consent agreement."
3. In N.J.A.C. 7:31-2.17(a)2i, the adoption has been modified for consistent designation of allowable signatories other than the principal executive officer.
4. In N.J.A.C. 7:31-3.9(d)1, the incorrect word "at" has been replaced with "as."
5. In N.J.A.C. 7:31-5.4(f), the correct call number is "CN 424," replacing former "CN 027."

Summary of Hearing Officer Recommendation and Agency Response:

Gerald P. Nicholls, Director of the Division of Environmental Safety, Health and Analytical Programs, served as the hearing officer at the April 26, 1993 public hearing. After reviewing the testimony given at the public hearing, Director Nicholls felt that the responses to this testimony and the subsequent changes made to the rules to address the concerns raised by the public should be accepted as set forth in the Summary of Public Comments and Agency Responses for this adoption.

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:

Richard J. McManus, Esquire
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Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:31.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:31-1.1 Scope of applicability

(a) (No change.)

(b) All owners or operators of *[facilities]* ***sites*** required to register with the Department because they handle, use, manufacture, store or have the capability to generate an extraordinarily hazardous substance in at least the registration quantity established for such substance or chemical compound on the Extraordinarily Hazardous Substance List set forth in Table I of N.J.A.C. 7:31-2.3, are subject to, and shall comply with, the provisions of this chapter and the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

7:31-1.5 Definitions

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

. . .

"Act" or "TCPA" means the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.

. . .

"Budget-expenditure variance" means the difference, either positive or negative, between the gross expenditures and the spending plan (budget) of the same fiscal year of the TCPA program. Where budget exceeds expenditures, this difference is positive.

. . .

"Consequence analysis" means the determination of the potential consequence of an EHS release on the surrounding population, using dispersion analysis to compute concentrations of EHSs and, at a minimum, identifying potential populations exposed to at least the acute toxicity concentration (ATC) for each EHS.

. . .

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

. . .

"EHS equipment" means that equipment *[systematically integrated]* within an EHS facility whose failure or improper operation could directly or indirectly result in or contribute to an EHS accident, including, but not limited to, vessels, piping, compressors, pumps, instrumentation and electrical equipment. EHS equipment includes fire suppression, risk mitigation *[and]***,* EHS release detection equipment***, and EHS shipping container handling equipment***.

"EHS facility" means a facility *[which handles, uses, manufactures or stores an EHS, or has the capability to operate an EHS within one hour, in a quantity equal to or greater than the registration quantity for that EHS in Table I of N.J.A.C. 7:31-2.3]* ***in EHS service***.

"EHS facility emergency response team" means those personnel responsible for responding to an emergency at a particular EHS facility. The specific duties for which an EHS operator is responsible as part of the EHS facility emergency team may be limited to emergency shutdown, notification of an emergency to supervisors or the site emergency response team, and use of emergency protective equipment.

"EHS operator" means an employee who is directly involved with an EHS and qualified and trained in the operations of EHS equipment or procedures.

"EHS procedure" means a step of an operation involving *[an]* ***a registered*** EHS, which if conducted improperly, could directly or indirectly result in or contribute to an EHS accident.

. . .

"EHS service" means the handling, use, manufacture, storage or generation of a *[specific]* ***registered*** EHS.

. . .

"Equivalent EHS equipment" means EHS equipment that, while not identical to existing EHS equipment, performs the same function in the same configuration as reliably as the existing EHS equipment it replaces.

. . .

"Extraordinarily hazardous substance" or "EHS" means any substance *[or chemical compound used, manufactured, stored, or capable of being produced from onsite components in this State in sufficient quantities at a single site, such that its release into the environment would produce a significant likelihood that persons exposed will suffer acute health effects resulting in death or permanent disability. Any substance]* or chemical on the extraordinarily hazardous substance list in Table I in N.J.A.C. 7:31-2.3 *[is an extraordinarily hazardous substance]*.

. . .

"Facility" means a building, equipment, and contiguous area covered by a process flow diagram and standard operating procedures, and under common area management. EHSs in a contiguous process flow under common area management shall be viewed as in a single facility. EHSs in a non-contiguous process flow shall be viewed as in separate facilities. Facility shall not include a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person.

. . .

"Hazard analysis" means a systematic identification of the potential conditions that may result in an EHS accident.

. . .

"Hazard unit" means the measure of inventory of an EHS expressed as multiples of its registration quantity, determined in accordance with N.J.A.C. 7:31-2.16(l).

"Inventory" means the substance balance at the site confirmed by the book value balance, computed after each transaction or at the end of the registrant's accounting day. The book value balance is computed by the standard accounting method: beginning balance, plus receipts, minus shipments or usage, equals ending balance. All balances whether book values or physical values are summations or physical counts of all material contained in shipping containers, storage vessels and in process equipment and piping.

. . .

"Non-contiguous EHS equipment" means EHS equipment that is not connected to other EHS equipment by piping through which an EHS flows, and that the Department has determined is sufficiently separated from other exempt EHS equipment to preclude combined off-site consequences.

. . .

"Process flow diagram" means a diagram including a legend of a facility which depicts the use, generation, storage or handling of an EHS showing items of equipment (groups of duplicate equipment may be represented by one symbol, if desired), flow of material from item to item, simplified basic control loops or major control schemes, points of discharge to the environment, and showing or cross-referencing documents which give details of material balance, flows, raw materials, products, intermediates, treatment chemicals, operating conditions of temperature, pressure, and stream characteristics, operating cycles and batch sizes where applicable. A process flow diagram includes, or references, a block flow diagram that depicts the receipt, handling and storage steps at the site of *[full, partially filled and empty]* shipping containers of the EHS.

. . .

"Registered EHS" means an EHS which is handled, used, manufactured or stored, or is capable of being generated within one hour, at a site in a quantity equal to or greater than the registration quantity for that EHS in Table I of N.J.A.C. 7:31-2.3.

"Registrant" means an owner or operator of a site who has registered one or more facilities in EHS service at that site with the Department pursuant to the Act or this chapter.

"Registration quantity" means the minimum quantity of an EHS handled, used, manufactured, stored, or capable of being produced in one hour at a single site that determines whether or not *[a facility]* ***an owner or operator*** must register under the program.

. . .

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"Replacement in kind" means the replacement of existing EHS equipment with identical or equivalent EHS equipment, and installation according to criteria for design and operation.

...

"Risk assessment" means the evaluation of the results of quantitative analyses to facilitate development of an effective risk reduction plan. The quantitative analyses shall consist of an estimate of the quantity, rate and duration of EHS released, a dispersion analysis, a consequence analysis, and an estimate of the probability or frequency of the undesired event.

"Risk assessment section" means all ***Department*** personnel responsible for the implementation and compliance of registrants' risk management programs, including the review of summary risk management program statements, the detailed review of the risk management programs, the creation and implementation of work plans, review of submittals to construct and operate new EHS facilities of owners or operators, review of submittals to exempt EHS facilities, and periodic *[audit]* inspections of risk management programs.

...

"Routine maintenance" means the repair or replacement in kind of existing EHS equipment to provide continuity of operation.

...

"SIC code" means the most recent revision of the standard industrial classification code published by the Office of Management and Budget, Executive Office of the President of the United States, that designates industry groups.

...

"Site emergency response team" means those personnel identified in the emergency response plan that respond to an emergency on the site which involves an EHS. Functions for which the site emergency response team shall be responsible include alarm identification and response, response to an EHS release, use of emergency protective equipment, rescue procedures, evacuation procedures, medical assistance, action plans for dealing with specific scenarios, and specifically assigned emergency response duties. Registrants may arrange with outside providers for any portion of these functions as needed.

...

"Standard operating procedures" or "SOP" means the *[document]* ***documents*** setting forth the operating procedures covering all details of operation in involving an EHS that are currently in effect at the facility.

"State of the art" means up-to-date technology that, when applied to a registrant's EHS equipment or procedures, will result in a significant reduction of risk. The technology represents an advancement in reduction of risk and shall have been demonstrated at a similar referenced facility to be reliable in commercial operation or in a pilot operation on a scale large enough to be translated into commercial operation. The technology shall be in the public domain at reasonable cost or otherwise available at reasonable cost commensurate with the reduction of risk achieved.

...

"Tabletop exercise" means an activity in which the participants are gathered informally to describe actions to be taken to respond to a pre-planned simulated EHS release scenario based upon the site emergency response plan as if it were an actual release, *[with]* ***to include documents relevant to the EHS release scenario such as*** site plans, equipment arrangement plans and local street maps referenced by the participants during the exercise.

"TCPA program operating expense" means the normal TCPA program operating items such as postage, telephone, travel supplies and data management systems.

"Total spending plan of the TCPA program" means the total annual estimated cost of TCPA operations approved by the Department for the fiscal year beginning July 1.

...

"Wastewater treatment system" means any structure or structures by means of which domestic, or combined domestic and industrial liquid wastes or sewage are subjected to any process in order to remove or so alter constituents as to render the wastes less offensive or dangerous to public health, safety, welfare, comfort, property or environment of the State or any inhabitants of the State before discharge of the resulting effluent either directly or indirectly into any waters of the State. Such term includes: any collection, treatment, storage, pumping and discharge facilities under control of the operator of such system and used primarily in connection with such system.

"Water treatment system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, pumping or distribution facilities under control of the operator of such system and used primarily in connection with such system.

SUBCHAPTER 2. GENERAL REQUIREMENTS, PROHIBITIONS AND PROCEDURES

7:31-2.1 and 2.2 (No change.)

7:31-2.3 Extraordinarily hazardous substance list

(a) The substances and chemical compounds listed in Table I below shall constitute the Department's extraordinarily hazardous substance list:

TABLE I

Name of Extraordinarily Hazardous Substance	CAS #	Registration Quantity in Pounds
PART I		
...		
Toluene-2,4-diisocyanate	584-84-9 or 26471-62-5 (mixture with Toluene-2,6-diisocyantate)	100
PART II		
Name of Extraordinarily Hazardous Substance	CAS #	Registration Quantity in Pounds
...		
Ammonia (aqueous) 28 percent by weight or more NH_3	1336-21-6	19,000
...		
Nitrogen Oxides		
Nitrogen dioxide (NO_2) 10 percent by volume or more	10102-44-0	200
Nitric oxide 10 percent by volume or more	10102-43-9	125
Nitrogen tetroxide 10 percent by volume or more	10544-72-6	200
Nitrogen trioxide 10 percent by volume or more	10544-72-7	175

...

(b) For those mixtures not specified in (a) above which contain EHS, the registration quantity shall be calculated using the weight percent of EHS contained in the mixture. When the weight of the total mixture times the weight percent is equal to or greater than the registration quantity for that EHS, the owner or operator must register.

7:31-2.4 Prohibitions

(a) No owner or operator of a *[facility]* ***site*** shall handle, use, manufacture or store or have the capability to generate within one

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hour, the registration quantity or greater of an EHS listed in N.J.A.C. 7:31-2.3 unless registered pursuant to the Act and this chapter with the Department.

(b) (Reserved)

(c) No owner or operator of a site shall construct a new EHS facility or no registrant with an established risk management program shall utilize an existing facility for a new EHS service unless the owner or operator or registrant has:

1.-2. (No change.)

3. Received written Departmental approval to construct the new EHS facility or to utilize an existing facility for a new EHS service.

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

(f) No registrant shall implement a modification to existing EHS equipment or procedures at its site without completing the requirements of its established risk management program as determined by the Department or its approved EHSARA workplan and managing the modification in accordance with N.J.A.C. 7:31-3.15;

(g)-(h) (No change.)

(i) No owner or operator of a facility shall fail to provide the Department with any information required to be submitted to the Department pursuant to the Act or this chapter or both.

7:31-2.5 Registration

(a) Each owner or operator of a site handling, using, manufacturing or storing at least the registration quantity of an EHS, or who has the capability to generate, within one hour, at least the registration quantity of an EHS on the EHS list in Table I in N.J.A.C. 7:31-2.3, shall register with the Department on TCPA Registration Form (STP-010) (registration form) available from the Department. All forms can be obtained from:

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection and Energy
Division of Environmental Safety, Health and Analytical Progams
CN 424
Trenton, New Jersey 08625

(b) Each owner or operator of a site which has handled, used, manufactured, stored or generated at least the registration quantity of one or more of the EHSs included in Table I of N.J.A.C. 7:31-2.3 at the same site and plans to handle, use, manufacture, store or generate such substances in the future, may register all the substances with the Department on the forms available from the Department.

(c) Each owner or operator of a site *[planning to construct a new EHS facility]* which will handle, use, manufacture or store an EHS in at least the registration quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3, or which will have the capability of generating an EHS within one hour in at least the registration quantity established for that EHS in Table I of N.J.A.C. 7:31-2.3, ***planning to construct a new EHS facility*** shall register with the Department at least 90 days prior to construction and comply with the requirements of N.J.A.C. 7:31-2.10(a). In Section D of the registration form the registrant shall record the maximum inventory of the EHS expected during the year.

(d) (No change.)

(e) Each registrant shall submit*:

1. By no later than August 22, 1993, completed Sections A, C, D and E of the TCPA Registration Form (STP-010); and

2.* *[an updated]* ***Updated*** Section A and C of the registration form and any other affected section, exclusive of items 1, 2 and 3 of section F, to the Department within 30 days after a change occurs which makes those sections of the registration form incorrect, including, but not limited to, any changes in the registrant's maximum EHS inventory.

(f) (No change.)

(g) Each registrant shall provide the following information in the appropriate section of the registration form:

1. Section A of the registration form shall contain:

i.-iv. (No change.)

v. The site's mailing address;

vi. The name, title and telephone number of the responsible manager;

vii. The site's tax lot and block number;

viii. The SIC code for the site; and

ix. The number of facilities at the site as identified in Section D.

2.-4. (No change.)

5. Section E of the registration form shall contain the process description of and principal equipment used with each EHS at the site, by facility according to the definition of facility in N.J.A.C. 7:31-1.5.

6.-7. (No change.)

8. The initial registration form submittal shall be accompanied by a USGS Topographic map with a scale of 1:24,000 indicating the location of each facility registered in Section D of the registration form.

(h) The Department will suspend from registration a registrant who submits a registration form showing a negative answer to question 3 of Section B (above at (g)2ii) of the registration form.

(i) A registrant with an established or approved risk management program who temporarily discontinues use, handling or generation of an EHS at particular EHS equipment, or stores it at less than the registration quantity, may remain a registrant with respect to that EHS provided the Department and the registrant execute a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31-3.16 and the registrant pays an annual fee as required by N.J.A.C. 7:31-2.16(o).

(j) An owner who has leased portions of a site to one or more than one facility operator, each handling, using, manufacturing, storing or having the capability of generating within one hour less than the registration quantity of an EHS in its (their) respective facility(ies), shall register, separately or jointly with the facility operator(s), the EHS on the site, if the sum of EHS quantity in all facilities is greater than or equal to the registration quantity. Alternatively, all facility operators at that site shall register jointly.

7:31-2.6 Risk management program procedures

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

(e) The review of each established risk management program accepted for further review shall consist of a review of documents and a site inspection. Any documents to be reviewed may be reviewed at the site or at the Department at the discretion of the Department. Each registrant shall submit upon the request of the Department the following documentation:

1. (No change.)

2. A catalog listing the documents required by N.J.A.C. 7:31-3.3(c) and their location at the site; and

3. (No change in text.)

(f) (No change.)

(g) Within 60 days after the registrant receives the draft consent agreement pursuant to (f) above, the registrant shall either sign and return the consent agreement to the Department, thereby indicating its acceptance of the requirements, or submit its proposals to correct any deficiencies;

(h) If the Department and registrant reach agreement on the risk management program, the registrant shall enter into a consent agreement with the Department and shall comply with the requirements of the approved risk management program as set forth in the consent agreement. For the registrant, the consent agreement shall be signed by its representative *[who meets the requirements of N.J.A.C. 7:31-2.17(a)1i]* ***identified at N.J.A.C. 7:31-2.17(d)*** and for the Department by the Chief of the Bureau of Release Prevention or his or her supervisor.

(i) If the registrant has not signed a consent agreement within 120 days of the registrant's receipt of the draft consent agreement identified at (f) above on the measures necessary to correct the deficiencies or omissions in the risk management program, the Department shall:

1.-2. (No change.)

7:31-2.7 Initial evaluation of the risk management program

(a) In order to determine if a registrant has an established risk management program, the Department shall review the RMP

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description, and the reports of safety reviews, hazard analyses and risk assessments of existing EHS equipment and procedures included in the summary risk management program statement (see N.J.A.C. 7:31-3.12) submitted by the registrant for compliance with the requirements of N.J.A.C. 7:31-3.4 and 3.9.

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

7:31-2.8 Transfer of risk management program

(a) In the event of the transfer of the site, or facility(ies) at a site, to a new owner or operator, or the change in name of the existing owner or operator, the new owner or operator shall, before operating EHS equipment, adopt the existing, or obtain a new, approved RMP for the site.

(b) A new owner or operator shall adopt an existing approved RMP by registering in accordance with N.J.A.C. 7:31-2.5(e) and (g) and, subsequent to registering, executing an addendum, prepared in accordance with N.J.A.C. 7:31-2.6(f) through (i), to the consent agreement that was previously signed by the Department and the former owner or operator.

7:31-2.9 Extraordinarily hazardous substance risk reduction work plan, accident risk assessment and risk reduction plan

(a) (No change.)

(b) A registrant assisting the Department in the development of the required work plan shall compile the list of documents of site data required by N.J.A.C. 7:31-4.4 and submit them to the Department:

1.-2. (No change.)

(c) Upon review of the documents submitted by the registrant, the Department will schedule a meeting with the registrant for the purpose of:

1.-2. (No change.)

3. Discussing and adapting the work plan to be developed in accordance with the requirements of N.J.A.C. 7:31-4 to the registrant's EHS equipment and procedures;

4.-8. (No change.)

(d) The Department will authorize one of the following types of personnel to perform the extraordinarily hazardous substance accident risk assessment:

1.-3. (No change.)

(e) (No change.)

(f) The Department, within 15 days after receipt of the names and proposals from the registrant, shall:

1. Select one of the consultants to perform the extraordinarily hazardous substance accident risk assessment; or

2. After determining that none of the consultants' proposals submitted by the registrant meet the requirements in N.J.A.C. 7:31-2.18, direct the registrant to submit, within 60 days, the names and proposals of an additional three consultants to the Department for its selection of one of the consultants to perform the extraordinarily hazardous substance accident risk assessment.

(g) (No change.)

(h) The consultant or Department shall perform the extraordinarily hazardous substance accident risk assessment and develop a recommended risk reduction plan which will include the identification of those activities necessary to create a risk management program. These shall be performed in conformity with the work plan developed and explained at the meeting held pursuant to (c) above. Members of the registrant's staff may participate in the work preparatory to the EHSARA.

(i) Upon completion of the extraordinarily hazardous substance accident risk assessment, the consultant or the Department shall prepare in accordance with the schedule in the work plan an EHSARA report in accordance with N.J.A.C. 7:31-4.6, including its recommendations to reduce risks.

(j) (No change.)

(k) The Department shall review the EHSARA report and prepare a risk reduction plan which will be incorporated into an administrative order which will be issued to the registrant. The administrative order shall direct the registrant to implement the risk reduction plan which shall include:

1. A list of risks that must be reduced;

2. The actions the registrant is to take to reduce the risks including those necessary to complete a risk management program meeting the requirements of N.J.A.C. 7:31-3 and the schedule within which the registrant shall complete the actions; and

3. A statement that the registrant has an established risk management program.

(l) (No change.)

(m) Upon implementation of the risk reduction plan as required by the administrative order, the established RMP will be reviewed in accordance with N.J.A.C. 7:31-2.6(e) through (i).

7:31-2.10 New EHS facilities

(a) Each owner or operator of a site planning to construct a new EHS facility, or a registrant with an established risk management program planning to utilize an existing facility for a new EHS service, shall:

1. (No change.)

2. Submit a Summary Risk Management Program Statement for the new EHS facility prepared in accordance with N.J.A.C. 7:31-3.12 to the Department at least 90 days prior to construction of the EHS facility;

3. Submit to the Department the documentation as required by N.J.A.C. 7:31-2.6(e) as applicable at least 90 days prior to the date the equipment is scheduled to be placed into EHS service; and

4. Submit to the Department the fees required by N.J.A.C. 7:31-2.16(d), in accordance with the bill issued by the Department.

*[(b)]***5.*** *[The equipment placed]* ***Place the equipment*** into EHS service *[shall be placed into service]* as represented by the latest revision of process flow diagrams, standard operating procedures, criteria for design and operation and other pertinent drawings and documents. The safety review and risk assessment shall be updated prior to placing the equipment in EHS service, if those drawings and documents differ from those reviewed and reported on in the original reports to the Department.

Existing (b) (No change.)

*[(d)]***(c)*** Prior to placing equipment into EHS service, the registrant shall enter into a consent agreement ***or consent agreement addendum, for that equipment*** with the Department and complete any items of the consent agreement ***or consent agreement addendum, for that equipment*** needed prior to EHS service.

7:31-2.11 Modification to *[an]* EHS *[facility]* ***equipment and procedures***

A registrant with an established or approved risk management program as determined by the Department planning to implement a modification to an existing EHS facility at its site shall manage the modification (change) in accordance with N.J.A.C. 7:31-3.15.

7:31-2.12 Inspections

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

(c) The Department plans to perform an RMP *[audit]* inspection at a registrant's site to verify the registrant's compliance with the Act, this chapter and the risk management program or risk reduction plan at a frequency appropriate to the administration of the program.

(d) (No change.)

(e) After an *[audit]* ***RMP*** inspection, the Department will identify material deficiencies found and include actions to correct the deficiencies in a draft addendum to the consent agreement to be signed by the Department and the registrant. The Department will send the draft addendum to the registrant and the registrant shall enter into agreement with the Department in accordance with the procedures for entering into consent agreements as detailed in N.J.A.C. 7:31-2.6(g) through (i).

7:31-2.13 Prevention of catastrophic accidents

(a) (No change.)

(b) The Department may include in the orders, at its discretion, the following:

1. A requirement that the owner or operator or registrant immediately submit a *[facility's]* ***site's*** risk management program to the Department for review;

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2.-5. (No change.)

(c) (No change.)

7:31-2.15 Release of information by insurance carriers

(a) After a review of documents and a site inspection, the Department may determine that a registrant shall authorize its environmental liability or worker's compensation insurance carrier to supply certain information to the Department.

(b) The determination will be based on a finding that the insurance information is necessary for the Department to evaluate effectively the registrant's EHS management practices.

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

7:31-2.16 Fees

(a) Each registrant or owner or operator of a site required to register pursuant to N.J.A.C. 7:31-2.5, shall pay an annual fee to the Department. The annual fee shall be computed in accordance with (b), (c) and (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.

(b) The Department shall assess annual fees that include a base fee, a facility derived fee, and an inventory derived fee. The base fee unit rate and the facility derived fee unit rate shall be calculated using the data from the TCPA data base as of October 1 of the current year.

(c) The Department shall annually determine during the month of December the base fee and the facility derived fee unit rates, taking the steps in (c)1 through 8 below. The Department shall:

1. Establish the spending plan by projecting the amount of money required to fund the TCPA program during the fiscal year in which registrants shall be charged fees based on the following data:

i. The cost of Department staff in all positions of the TCPA program for which fees are charged for the current fiscal year;

ii. The cost of fringe benefits for those staff members identified at (c)1i above, calculated as a percentage of their salaries, which percentage is set by the New Jersey Department of the Treasury based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. Indirect costs attributable to those staff members identified at (c)1i above. "Indirect costs" means costs incurred for a common or joint purpose, benefiting more than one cost objective, and not readily assignable to the cost objective specifically benefited without effort disproportionate to the results achieved. Indirect costs shall be calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the total of salaries and fringe benefits;

iv. The estimated TCPA program operating expenses; and

v. The budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with the TCPA program;

2. Subtract a positive difference or add a negative difference of the "budget-expenditure variance" of the spending plan for the TCPA program of prior fiscal year, determined by the Department as of October 1 of the current fiscal year, from the amount of money required to fund the TCPA program determined in (c)1 above to determine the net money required;

3. Project the total amount to be contributed by the inventory derived fee to the aggregate fee of each registrant. This projection shall be based on the following data and steps:

i. Determine the sum of hazard units at all sites or systems registered as of October 1 of the current fiscal year; and

ii. Multiply the sum of hazard units by the inventory derived fee unit rate specified at (l)3 below;

4. Subtract the contribution of the inventory derived fee determined in (c)3 above from the net money required as determined in (c)2 above to determine the sum of base fee plus facility derived fee contribution needed;

5. Determine the facility derived fee contribution based on the following data and steps:

i. Determine the number of *[TCPA]* facilities ***in EHS service*** registered as of October 1 of the current fiscal year; and

ii. Calculate the facility derived fee rate which equals the sum of salaries plus fringe of the Risk Assessment Section staff plus the percent of the TCPA program operating expenses assigned to that staff divided by the number of facilities;

6. Subtract the contribution of the facility derived fee determined in (c)5ii above from the remainder from (c)4 above to determine the base fee contribution needed;

7. Determine the base fee unit rate by dividing the base fee contribution needed from (c)6 above by the total number of registrants; and

8. Each year, the Department shall prepare an Annual TCPA Fee Schedule Report. During the month of December, the Department shall publish a summary including the fee schedule in the New Jersey Register setting forth the adjusted facility-derived and base fee unit rates and the operative date thereof. The notice shall state that the report is available, and shall direct interested persons to contact the Department for a copy of the report. The Department shall provide a copy of the report to each person requesting a copy.

(d) Each owner or operator of a new EHS facility at a site with no EHSs registered who registers an extraordinarily hazardous substance with the Department shall submit the annual fee for that calendar year computed in accordance with (b), (c) and (i) through (m) below in accordance with the bill received from the Department.

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

(g) Except for the fees submitted pursuant to (d) and (e) above, the Department, during the month of January, will send each registrant a bill stating the fee for that calendar year.

1. This bill shall include the base fee and additional fees calculated based on data from the registrant's registration form on file with the Department as of the previous October 1—the number of facilities reported in Section E, or determined by the Department, and the inventory reported in Section D.

(h) Each registrant shall pay its fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28 of the year in which it is billed. Any registrant which has not paid its annual fee by the due date will be assessed a 25 percent late fee. The check or money order shall be submitted to:

New Jersey Department of Environmental Protection and Energy
Bureau of Revenue
Division of Financial Management, Planning and General Services
CN 417
Trenton, New Jersey 08625

(i) (No change.)

(j) Each owner or operator of a registered water treatment system or a registered wastewater treatment system or both shall pay annually for those systems a base fee plus a facility derived fee for one facility plus an EHS inventory derived fee.

(k) (Reserved)

(l) The inventory derived fee at each site, water treatment system and wastewater treatment system is determined in the following manner:

1.-2. (No change.)

3. The number of hazard units for each EHS is multiplied by $10.00 per hazard unit to determine the fee for each EHS.

(m) The annual fee for each registrant shall be the sum of the base fee and the sum of the facility derived fee for each facility and the sum of each EHS inventory derived fee except as provided at (j) above, and (n) and (o) below.

(n) (No change.)

(o) The annual fee for each registrant who has temporarily discontinued use, handling, storage or generation of the particular EHS at the site and has signed a consent agreement or consent agreement addendum pursuant to N.J.A.C. 7:31-3.16 shall be 25 percent of the base fee.

(p) An owner who has leased portions of a site to one or more than one facility operator shall pay an annual fee separately or jointly with the facility operator(s) or, alternatively, the operator(s) shall pay an annual fee. The fee shall be the sum of the base fee for

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the site and the facility derived fee for each facility and the sum of each EHS inventory derived fee for each facility except for (n) above.

Recodify existing (o)-(p) as (g)-(r). (No change in text.)

7:31-2.17 Required signatures and certifications

(a) All registration forms, risk management program checklists, exemption requests, annual exemption reaffirmations, petitions to withhold privileged trade secret or security information and substantiation forms and supplemental information in support of petitions to withhold privileged trade secret or security information shall not be complete until they contain the following signatures and certifications:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including fines or imprisonment or both, for submitting false, inaccurate or incomplete information."

i. The certification at (a)1 above shall be signed by the highest ranking individual with *[direct knowledge and]* overall responsibility for the information contained in the certified documents; *[and]*

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

i. The certification at (a)2 above shall be signed by the *[ranking]* official, as follows:

(1) For a corporation, by a person authorized to execute the documents listed in (a) above on behalf of the corporation by resolution of the corporation's board of directors or by a provision in the corporation's by-laws;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

(3) For a municipality, ***by*** the mayor or *[equivalent]* ***other*** official ***authorized by the local governing body to bind the municipality***;

(4) For a county, ***by*** the county executive or *[equivalent]* ***other*** official ***authorized by the board of chosen freeholders to bind the county***;

(5) For the State, *[an official of at least the rank of agency director]* ***by the agency head or person designated by the agency head***; or

(6) For any other public agency, ***by*** a principal executive officer or *[ranking elected]* ***other*** official ***authorized by the public agency's governing body to bind the agency***.

(b) Notwithstanding the provisions of (a) above, the certification contained in (a)1 above shall be the only certification required if the individual required in (a)1i above to sign the certification is the same individual required in (a)2i above to sign the certification at (a)2 above.

(c) All other reports required by this chapter, the summary risk management program statements, the risk management programs, annual reports, reports of safety review, hazard analysis and risk assessment, confidentiality claim forms and substantiation forms in support of confidentiality claims, and other information requested by the Department shall not be deemed submitted to the Department unless signed by a person described in (a)1i above, and the person who signs the reports shall make the certification set forth in (a)1 above.

(d) All consent agreements and consent agreement addenda shall not be deemed executed unless signed by the highest ranking corporate, partnership or government official or official at the site with sufficient responsibility to effect the items agreed.

(e) Each item of correspondence with the Department from a registrant shall not be deemed submitted unless signed by the registrant's responsible manager or any person of the registrant staff whose name is included in the current registration form of the registrant.

7:31-2.18 Criteria for selecting independent consultants

(a) (No change.)

(b) The registrant shall not submit the name and proposal of any consultant who:

1. Is owned or controlled by the registrant or by a firm which owns or controls both the registrant and the consultant or owns or controls the registrant;

2. Was the designer of any EHS facility at the site;

3. Is debarred or suspended pursuant to N.J.A.C. 7:1-5 or on the New Jersey Department of Treasury's list of firms debarred or suspended from engaging in work with the State;

4. Fails to state in its written proposal that it will not subcontract any of the work involved in the EHSARA unless provided in writing by the Department; or

5. Fails to state in its written proposal that it will not change the staff named to do any of the work involved in the EHSARA unless approved in writing by the Department.

(c) (Reserved)

(d)-(f) (No change.)

7:31-2.19 Exemptions for non-contiguous EHS equipment

(a) A registrant may request that non-contiguous EHS equipment be exempted from the requirements of N.J.A.C. 7:31-3 provided that the following conditions are met:

1. The non-contiguous equipment has only the capability to contain or generate in one hour less than the registration quantity of the EHS as listed in N.J.A.C. 7:31-2.3; and

2. The registrant demonstrates to the satisfaction of the Department *[by]***:

i. By* dispersion and consequence analyses in accordance with the methods set forth in N.J.A.C. 7:31-3.9(d) that a release of the contained or generated quantity of the EHS, alone or in combination with any concurrent releases from other exempt non-contiguous EHS equipment, will not result in the concentration criterion determined at N.J.A.C. 7:31-3.9(d)2 extending beyond the site boundary***; or**

ii. That the concentration of the EHS in the EHS equipment is below the ATC for that EHS as established by the Department.*

(b) The request for exemption shall include:

1. A plot plan to scale of the site, showing location of the EHS equipment and quantity of the EHS contained in the equipment for which an exemption is being requested and the distance from this EHS equipment to other EHS equipment and the site boundaries;

2. The results of the hazard analysis and the dispersion and consequence analysis utilizing the estimates and assumptions set forth in N.J.A.C. 7:31-3.9(c) and (d); and

3. A process flow diagram which depicts the EHS equipment and procedures which are requested for exemption and the EHS equipment and procedures which shall remain managed by the RMP if the exemptions are granted.

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

(e) On an annual basis or in the current year's annual report, the registrant shall reaffirm to the Department that the information submitted in accordance with (b) above has not changed.

(f) The Department shall reserve the right to rescind any exemption granted prior to the adoption of these rule amendments if the exemption is deemed inappropriate.

7:31-2.20 Exemptions for contiguous EHS equipment

(a) A registrant may request that contiguous EHS equipment be exempted from the requirements of N.J.A.C. 7:31-3 (except N.J.A.C. 7:31-3.6) provided that the following conditions are met:

1. The contiguous equipment has only the capability to contain or generate in one hour or have a maximum flow in one hour of less than the registration quantity of the EHS listed in N.J.A.C. 7:31-2.3;

2. The registrant demonstrates to the satisfaction of the Department:

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i. By dispersion and consequence analyses in accordance with the methods set forth in N.J.A.C. 7:31-3.9(d), that a release of the EHS, alone or in combination with any concurrent releases from other exempt EHS equipment, will not result in the concentration criterion determined at N.J.A.C. 7:31-3.9(d)2 extending beyond the site boundary; or

ii. The concentration of the EHS in the EHS equipment is below the ATC for that EHS as established by the Department; and

3. The contiguous equipment is maintained in accordance with the provisions of N.J.A.C. 7:31-3.6, Preventive maintenance.

(b) The request for exemption shall include:

1. A plot plan to scale of the site, showing location of the EHS equipment and quantity of the EHS contained in the equipment for which an exemption is being requested and the distance from this EHS equipment to other EHS equipment and the site boundaries;

2. The results of the hazard analysis and the dispersion and consequence analyses utilizing the estimates and assumptions set forth in N.J.A.C. 7:31-3.9(c) and (d); and

3. A process flow diagram which depicts the EHS equipment and procedures which are requested for exemption and the EHS equipment and procedures which shall remain managed by the RMP if the exemptions are granted.

(c) The Department shall grant the exemption only if the registrant demonstrates to the satisfaction of the Department that the requirements of (a) above are met.

(d) On an annual basis or in the current year's annual report, the registrant shall reaffirm to the Department that the information submitted in accordance with (b) above has not changed.

(e) The Department shall reserve the right to rescind any exemption granted prior to *[the adoption of these rule amendments]* ***July 19, 1993***, if the exemption is deemed inappropriate under this chapter as operative *[_____]* ***July 19, 1993***.

SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A RISK MANAGEMENT PROGRAM

7:31-3.1 Scope and applicability

(a) (No change.)

(b) All risk management programs shall meet the requirements of this subchapter before being approved by the Department. ***A registrant with a risk management program designated either established or approved by the Department on the effective date of this rule as readopted shall revise its risk management program to meet the requirements of this subchapter by January 1, 1994.***

(c) (No change.)

7:31-3.3 Risk mangement program

(a-(b) (No change.)

(c) Each registrant shall maintain and make available for Department review, either at the site or at the Department's offices in the discretion of the Department, the following updated documentation including revision dates covering process information involving EHSs in support of the risk management program and a catalog list of all such documents showing title, identification number and date of issue:

1. Process chemistry;

2. Report of book value balance of inventory of each extraordinarily hazardous substance for the past 12 months as reconciled each month with the physical inventory;

3. Reports of hazard analyses, risk assessments and safety reviews of new and existing equipment performed during the previous six calendar years;

4. Accident investigation procedures, records and reports covering EHS accidents for the past six calendar years;

5. Updated process flow diagram of each EHS facility;

6. Updated piping and instrumentation diagrams;

7. Standard operating procedures;

8. Site-wide safety procedures;

9. Emergency response program and plan;

10. Description of the EHS operator training program including job clasifications and job descriptions for EHS operators and its records for the service period of the employees;

11. Annual calendar year tabulation of EHS operator training conducted for the last three calendar years;

Recodify existing 1.-3. as 12.-14. (No change in text.)

15. National Electrical Code *[area]* classification diagrams for the EHS facility and the adjoining areas on the site which can pose a threat of EHS release due to electrical sparking which may cause an explosion or fire;

Recodify existing 5.-7. as 16.-18. (No change in text.)

19. Criteria for design and operation used at the site;

20. Preventive maintenance program and records covering EHS equipment throughout service life;

21. Annual calendar year tabulations of EHS equipment inspected and tested versus EHS equipment scheduled to be inspected and tested for the last three calendar years; and

22. Audit procedures and reports as required at N.J.A.C. 7:31-3.11 for the last three calendar years.

7:31-3.4 Safety review of new and existing facilities

(a) All new EHS facilities shall be designed, installed and operated in accordance with the criteria for design and operation.

(b) The requirements for safety review of design of new EHS facilities shall include:

1. Comparison of the following information describing the EHS equipment and operations with criteria for design and operation:

i.-v. (No change.)

vi. Electrical *[area]* classification drawing;

vii.-ix. (No change.)

x. EHS equipment specifications;

xi. External forces and events data;

xii. Firewater system piping diagrams;

xiii. Sewer system piping diagrams; and

xiv. Procedures and conditions for normal, abnormal and emergency conditions prepared pursuant to N.J.A.C. 7:31-3.5(c)2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14 and 15;

2. Documentation of the safety review and its findings; and

3. A report of the safety review of design of new EHS facilities. The report may be prepared by the designers and shall:

i. Contain a list of the criteria for design and operation upon which the design is based;

ii. Identify the new EHS facility, the EHS equipment items reviewed, the drawings and documents reviewed, the date(s) of the review, the date of issue of the report and the name position and affiliation of the persons who performed the review; and

iii. Explain where the design of the new EHS facility deviates from the listedconsensus standards of the criteria for design and operation and the reasoning for such a deviation.

(c) There shall be an annual safety review performed on all existing EHS equipment and procedures each calendar year no sooner than six months or longer than 18 months from the previous safety review.

(d) The requirements for the annual safety review shall include:

1. A visual inspection of the EHS equipment or review of up-to-date inspection records against process flow diagrams, piping and instrument diagrams, electrical one line diagrams, electrical *[area]* classification, and sewer and fire system piping diagrams to determine whether the diagrams reflect actual conditions with respect to EHS equipment, runs and sizes of pipe, location and function of instruments, and location, function and size of valves. Deviations found shall constitute an unauthorized modification and shall be immediately discontinued from service until the requirements of this chapter for a modification are satisfied;

2. A visual inspection of the EHS equipment or review of up-to-date inspection recors against design documents to determine whether safety relief devices and emergenc systems such as deluges, interlocks, controls, back-up systems and alarms ae functioning or capable of functioning as designed. EHS safety systems or devices found to be inoperable shall be returned to operational status immediately;

3. (No change.)

4. An inspection of the EHS equipment and procedures and interviews of site personnel to determine whether actual conditions

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reflect standard operating procedures. Deviations found to be unauthorized shall be immediately discontinued;

5. Documentation of the deviations of procedure or equipment found by (d)1 through 4 above;

6. A report of the results of the safety review by the registrant shall be written and shall:

i. Identify the facility in EHS service;

ii.-iii. (No change.)

iv. Identify the name, position and affiliation of the persons who performed the review, the date(s) of the review, and the date of issue of the report; and

7. (No change.)

7:31-3.5 Standard operating procedures

(a) (No change.)

(b) A *[hardcopy]* ***copy*** of the standard operating procedures and a copy of the Material Data Safety Sheets or fact sheets shall be readily available to EHS operators ***except that procedures for emergency shutdown shall also be readily available in hardcopy***.

(c) The standard operating procedures shall include, but not be limited to:

1.-11. (No change.)

Recodify existing 13.-15. as 12.-14. (No change in text.)

(d) Modifications to the standard operating procedures shall be made in accordance with N.J.A.C. 7:31-*[2.11]***3.15***.

(e) (No change.)

(f) A current table of contents of each EHS standard operating procedures listing the items of (c) 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 shall be maintained, filed and distributed to the responsible manager.

7:31-3.6 Preventive maintenance program

(a) The preventive maintenance program shall be written, be kept at the site and include all preventive maintenance program documents. Requirements of the preventive maintenance program shall include, but not be limited to, the following:

1. (No change.)

2. A procedure insuring that only modifications approved *[and authorized by the responsible manager]* ***pursuant to N.J.A.C. 7:31-3.15*** are made and that communications are maintained between the maintenance, product, safety and engineering departments;

3. (No change.)

4. Inspection or testing of all pressure safety devices in EHS service at least as frequently as the frequency set forth in the criteria for design and operation applicable to the particular EHS involved. In the absence of frequencies in the criteria for design and operation, inspections or tests shall be performed, at a minimum, once each calendar year;

5.-8. (No change.)

9. Procedures to insure that work on or near EHS equipment performed by contractors will be done in accordance with the requirements of the preventive maintenance program and N.J.A.C. 7:31-3.17;

10.-12. (No change.)

(b) (No change.)

7:31-3.7 EHS operator training

(a) The training program for EHS operators shall be written and, at a minimum, include the following:

1. (No change.)

2. Procedures to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position;

3. Specified time periods of in-house training for each position covering orientation, specific EHS training and on-the-job training, trainee evaluation, final qualification and periodic refresher training. A procedure shall be established for tracking the progess of each EHS operator at regular intervals. In addition, the maximum period of time for each training program shall be established within which the EHS operator must achieve qualified status; and

4. Procedures to insure that work done by contractors to assist as EHS operators shall be in accordance with the requirements of the standard operating procedures and N.J.A.C. 7:31-3.17.

(b) The training which EHS operators will receive shall, at a minimum, include:

1.-2. (No change.)

3. On-the-job training for newly assigned EHS operators shall include, but not be limited to, the following:

i.-v. (No change.)

4. Refresher training at least once each calendar year which shall present an overview and updated information on the standard operating procedures, EHS material safety data sheets, safe handling of the EHS, EHS emergency Procedures and review of EHS accident reports.

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

(e) Documentation of all training, evaluations and qualifying activities for each employee receiving EHS operator training shall be kept at the site.

(f) A tabulation of EHS operator training performed during the previous calendar year shall be prepared by the registrant, filed and submitted to the responsible manager. The tabulation shall include identification of EHS operators trained, their job titles and facility designation, subjects covered and training dates.

7:31-3.8 EHS accident investigation procedures

(a) There shall be written procedures for investigating all EHS accidents which shall include the following:

1.-4. (No change.)

5. The methods of implementing recommendations for risk reduction resulting from analysis of EHS accident investigations including:

i. Procedures for management review of EHS accident reports. The review shall result in the evaluation of the recommendations of actions or alternatives *[to be taken to prevent]* ***associated with the prevention of*** accident recurrence;

ii. Procedures for implementing EHS accident investigation recommendations, including assignment of personnel responsible;

iii. Procedures for establishing a timetable for implementing recommendations for risk reduction;

iv. Procedures to ensure that recommendations are implemented such as the use of status reports on implementation of risk reduction measures; and

v. Procedures for evaluating the need for employee retraining or reassignment based on the record of employee errors; and

6. (No change.)

(b) All EHS accidents reports shall be written and shall include, at a minimum, the following:

1.-6. (No change.)

7. Recommended actions to be implemented to prevent a recurrence which shall include the following, as appropriate:

i. Where human error was determined to be the cause, retraining or reassignment of employees involved in the accident;

ii.-iii. (No change.)

8.-9. (No change.)

(c) EHS accident investigation records shall include:

1.-2. (No change.)

3. An updated record of human errors including a list of each employee of the registrant or contractors or any other person *[involved in]* ***who directly or indirectly contributed to*** an EHS accident caused by human error; and

4. An end of calendar year summary report which shall be prepared, filed on site, distributed to the responsible manager, and shall consist of:

i.-iv. (No change.)

7:31-3.9 Risk assessment program for specific pieces of EHS equipment or operating alternatives

(a) A risk assessment shall be conducted on each new EHS facility, each new EHS operating alternative or each ***required*** modification ***to EHS equipment and procedures*** identified at N.J.A.C. 7:31-3.15.

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(b) A risk assessment shall be conducted on existing EHS equipment or operating alternative at least once every *[four]* ***five*** calendar years ***no sooner than 54 months or no later than 66 months*** from the previous hazard analysis satisfying the requirements of (c) below.

(c) Each risk assessment shall include a hazard analysis performed in accordance with the following:

1. The method of the hazard analysis shall be singly or in combination a Hazard and Operability Study, Failure Mode and Effect Analysis, qualitative Fault Tree Analysis, What If/Check List or any alternative method demonstrated to the Department as being equivalent to or better than any of the above four methods. The alternative method shall be a systematic examination of both human and equipment failure that may result in an EHS accident performed by a team from a review of updated issues of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams, standard operating procedures, maintenance procedures, accident investigations and results of equipment reliability studies.

2. The hazard analysis shall be conducted by a team. The team shall consist of personnel trained to perform the hazard analysis method and knowledgeable in the technology and operations, such as the process chemistry, the design of the equipment, the procedures of operation and maintenance and the related criteria for design and operation. In addition, they shall have the technical expertise to answer most of the questions of the review without recourse to further expertise. The team shall be comprised of members of the registrant's staff, employees of an outside consulting firm chosen by the registrant or both. The team shall include a person assigned to lead the study and a person to record the results, both of whom are technically trained and will be available for the duration of the study.

3. Results of the study for a unit or system shall be reported in tabular form. The results entered on the table shall include the release point and corresponding scenario of potential basic (initiating) and intermediate event sequences, the corresponding ***estimated*** quantity or rate and duration, and the recommended action, if any, in terms of equipment or procedure to mitigate the consequences.

4. The hazard analysis team shall:

i. Identify for all EHS equipment, the points of possible EHS releases, the corresponding approximate quantity of an instantaneous EHS release or the rate(s) and duration of a continuous EHS release, either of steady or non-steady state, and corresponding cause of the EHS release. Estimates of the quantity or rate and duration of a release shall be based on actual release mechanisms, and shall reflect the operating procedures and mitigation equipment and procedures, planned for new or modified EHS facilities or in place at existing facilities; and

ii. Identify release scenarios from a review of EHS equipment failure data, equipment reliability data and EHS accident reports of the EHS facility that have been prepared since the last hazard analysis.

(d) A registrant shall perform a dispersion/consequence analysis, for the maximum release rate or quantity scenario identified in (c)*[2]****4i*** and (c)*[2ii]****4ii*** above, and for each successively lower release rate or quantity scenario, until all scenarios are determined for which the concentration criteria as determined in (d)2 and (d)4 below are exceeded off-site. As to procedure, the registrant shall:

1. Select an atmospheric dispersion model with the capability to accept inputs *[at]* ***as*** required in (d)3 and 4 below;

2. Determine the concentration criterion for modeling downwind distance of the plume or cloud from the following:

i. For release duration of one hour or greater, use the ATC of the substance being modeled; and

ii. For release duration of less than one hour, except for hydrogen cyanide, ketene, arsine, methyl chloroformate, methyl dichlorosilane, methyl fluoroacetate, nickel carbonyl, phosphorous trifluoride, sulfur monochloride, thionyl chloride and trimethylchlorosilane, use a concentration giving an equivalent dose which is equal to the ATC of the substance that may be released, divided by the release duration in hours, using a minimum allowable limit of one-quarter hour. For those EHSs listed above, use the ATC;

3. Input the following parameters into the dispersion model:

i. Estimates of release parameters obtained in accordance with (c)*[2i]****4i*** and (c)*[2]****4ii*** above;

ii. Meteorological parameters of F-stability and wind speed of two meters per second at 10 meters elevation for ground-level releases and elevated releases affected by gravity or of A-stability and wind speed of two meters per second for elevated, high flowrate, buoyant releases, whichever stability yields the greatest downwind distance;

iii. Elevation of the source of release;

iv. Other scenario specific parameters such as release temperature; and

v. The surface roughness or rural/urban dispersion coefficients, as appropriate to the model selected, in the downwind direction;

4. Determine the downwind distance of the plume or cloud at one meter height (ground level) using:

i. The concentration criterion as obtained in (d)2 above, in any direction which has differing surface roughness; and

ii. Five times the concentration criterion as obtained in (d)2 above, in any direction which has differing surface roughness;

5. Determine whether or not each concentration criterion as obtained in (d)2 above extends beyond the site boundary; and

6. Repeat steps (d)1 through 5 above until a release scenario is modeled for which the concentration criteria obtained in (d)2 and 4 above do not extend beyond the site boundary.

(e) For each release scenario identified at (d)5 and 6 above as indicating that five times the concentration criterion extends beyond the site boundary, the registrant shall:

1. Perform an evaluation of state of the art, including alternate processes, procedures or equipment which would reduce frequency or consequences of an EHS release;

2. Develop a risk reduction plan utilizing state of the art risk reduction measures which will reduce the frequency or consequence of the release;

3. Develop a schedule for its implementation in each instance; and

4. Document all estimates and analyses performed as part of the risk assessment.

(f) For each release scenario identified at (d)5 and 6 above as indicating that one times the concentration criterion extends beyond the site boundary, the registrant shall either:

1. Perform a state-of-the-art evaluation in accordance with (e)1 and 2 above; or

2. Determine the frequency of release occurrence:

i. If less than 10^{-4} per year, no further assessment is required; but

ii. If greater than or equal to 10^{-4} per year, perform a state-of-the-art evaluation in accordance with (e)1 and 2.

(g) The registrant shall prepare a report of the risk assessment for each new EHS facility***, each new EHS operating alternative*** or ***each required*** modification ***to EHS equipment and procedures, identified at N.J.A.C. 7:31-3.15*** or ***for*** existing EHS *[facility]* ***equipment or operating alternatives*** which shall be kept at the site. The report shall:

1. Identify the facility that is the subject of the risk assessment and the name, position and affiliation of persons who performed the hazard analysis and the dispersion/consequence analysis, and the dates each was performed;

2. Summarize on one spreadsheet each potential EHS release identified in (c)1 and 2 above, the rate, duration or quantity. For those scenarios modeled in accordance with (d) above, summarize the downwind distances of the plume or cloud, the concentration defining the downwind distances and the respective distances to the property line. For those release scenarios identified in (f) above, summarize the frequency of release occurrence in releases per year;

3. For each potential EHS release identified in (e) and (f) above, evaluate and summarize each feature incorporated in the constructed

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facility or the recommended risk reduction plan that reflects current state-of-the-art and the lowered possible risk commensurate with the neighboring environment;

4. Explain why any potential EHS release identified in (e) and (f) above is not addressed in the risk reduction plan; and

5. Provide at a minimum the following information obtained from dispersion/consequence analysis as required at (d) above:

i. Ground level coordinates of the downwind distance contour around the release point connecting points determined at (d)4 above, for the one and five times concentration criteria, for the maximum release scenario and the minimum release scenario that indicates a concentration criterion that extends off-site; and

ii. Identification by compass direction within the downwind distance contour determined at (g)5i above of off-site centers of residential areas, commercial areas, major highways, and areas of sensitive populations, such as hospitals, schools and nursing homes.

(h) Each report of risk assessment shall be submitted to the responsible manager.

(i) The responsible manager shall implement the risk reduction plan, and employ procedures such as status reports to ensure that the risk reduction measures are implemented.

7:31-3.10 Emergency response program

(a) Each registrant shall develop and implement a written emergency response program which shall include, at a minimum:

1. Preparation and distribution of copies of the emergency response plan;

2. Emergency response training for all site employees including schedules for initial and annual refresher training during each calendar year in:

i. (No change.)

ii. Response to EHS ***accidental*** release;

iii. Use of required emergency response equipment; and

iv. (No change.)

3. Emergency response training for the site wide and the EHS facility emergency response teams as it applies to their function including a schedule for initial training and annual refresher training during each calendar year or training whenever the team member's responsibilities or designated actions under the emergency response plan change or whenever the emergency response plan is changed, in the areas of:

i.-vi. (No change.)

vii. Action plans for dealing with specific EHS ***accidental*** release scenarios; and

viii. (No change.)

4. Emergency response exercises for *[EHS]* ***each registered*** facility *[emergency response teams]* and the site *[wide emergency response team]*, including, but not limited to:

i. A schedule which will require the ***registrant's*** emergency response *[team to participate]* ***plan to be demonstrated*** in at least two exercises each calendar year *[in which]* ***at each registered facility***. ***For any two exercises at facilities at the site,*** it *[is]* ***shall be*** assumed that the ATC of the EHS extends beyond the site boundary***, and the site emergency response team shall participate at a strength appropriate to demonstrate the plan*** *[and each EHS facility emergency response team in at least two exercises each calendar year. The registrant shall define the minimum number of team members needed to participate in the exercise to demonstrate the functions required]*; *[and]*

ii. A minimum of one exercise other than a tabletop exercise each calendar year, for *[the site wide team and the EHS]* ***each registered*** facility *[emergency response teams]* ***and for the site***; ***and***

iii. A requirement that the scenario demonstrated in an exercise shall not duplicate the scenario of the immediately previous exercise demonstrated at that particular registered facility.

5. A written assessment of the emergency response plan after each implementation or emergency response exercise, including, but not limited to:

i.-ii. (No change.)

iii. The performance of the personnel participating in the exercise and a list of their names;

iv. The adequacy of treatment of exposed personnel at the site and at offsite facilities; and

v. The recording of events;

6. A written assessment, after each implementation or emergency response exercise, of the adequacy or need for emergency response equipment including, but not limited to:

i. Emergency response communications systems;

ii. Emergency power and lighting systems;

iii. The distribution of the emergency response plans, plot plans, and maps of the surrounding community;

iv. EHS detection systems;

v. Self contained breathing apparatus;

vi. Fire fighting equipment;

vii. Medical supplies;

viii. Personnel protective equipment; and

ix. Equipment necessary to reduce the quantity or duration of EHS releases, such as capping devices, leak repair kits and spill containment;

7. Preparation of a remedial action plan and a schedule for completion to correct any inadequacies identified in the assessment at (a)5 and 6 above of the emergency response plan or equipment;

8. The installation of a meteorological station owned by the registrant capable of providing, at a minimum, a continuous record of wind speed and direction for the site;

9. The procurement, of onsite hand held or mobile EHS detection equipment where commercially available; and

10. (No change in text.)

(b) Each registrant shall have a written emergency response plan that includes, but is not limited to, the following:

1.-6. (No change.)

7. A description of the site's emergency notification system which shall include the following requirements for reporting EHS accidents:

i. Designation of emergency operators, on a 24 hour basis, at the site or central control station, by job title to be notified in case of an EHS accident or imminent EHS accident at the site, and the internal procedures to be followed in making that notification;

ii. Immediate notification of the Department's emergency communications center at 609-292-7172 by the emergency operator of an EHS accident or imminent EHS accident at the site. The notification shall include the following information:

(1) Name and address of site of the EHS accident;

(2) (No change.)

(3) The time of, or anticipated time, of the EHS accident and the projected duration;

(4)-(6) (No change.)

iii. In addition to the information required by (c)7ii above, the emergency operator shall state that the notification is:

(1) An ALERT or that an EHS accident is imminent and will probably occur;

(2) A SITE EMERGENCY or that an EHS accident has occurred which will probably not have an off-site impact; or

(3) A GENERAL EMERGENCY or that an EHS accident has occurred which will probably have an off-site impact; and

iv. The site emergency coordinator shall be prepared to provide the Department's emergency communications center with an update which shall include the following information:

(1) Name and address of site of the EHS accident;

(2) (No change.)

(3) Location of the point of EHS release, a description of the source, cause and type of EHS accident, quantity and concentration of the EHS released, and whether the EHS release is of a continuing nature;

(4)-(5) (No change.)

v. An accidental release of an EHS that does not present a potential for off-site impact; does not present a potential for, or actual, on-site injuries or fatalities; does not activate the *[site's or EHS facility's]* ***registrant's*** emergency response *[team; and is not reportable under any other State or Federal rule]* ***plan*** shall

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be exempt from these notification requirements. Such *[incidents]* ***accidents*** shall be recorded following the procedures established at N.J.A.C. 7:31-3.8, EHS accident procedures. ***This revision does not affect any other State or Federal notification requirement.***

8.-9. (No change.)

10. Procedures for timely and appropriate notification of, and coordination with, the emergency coordinator for local emergency planning committee (LEPC), which procedures shall include:

i. The name of the LEPC coordinator, his or her alternate and their respective telephone numbers;

ii. The submittal of a copy of the registrant's "Emergency Response Guide," conforming to the Standard Format of the New Jersey State Police, if requested by the LEPC in whose jurisdiction the registrant is located; and

iii. The notification of the LEPC coordinator of the registrant's schedule of two emergency response exercises per year;

11. (No change.)

12. A detailed plan of evacuation of on site personnel, including, but not limited to, the following:

i.-iii. (No change.)

iv. Provisions for moving personnel to designated assembly areas;

13. A detailed plan for reentry and site recovery including, but not limited to, procedures and equipment for the safe cleanup and decontamination of the site and removal of waste materials; and

14. Procedures to insure that work performed by contractors hired by the registrant to assist during an emergency response incident will meet the requirements of the emergency response program and of N.J.A.C. 7:31-3.17.

7:31-3.11 Audit requirements for risk management programs

(a) (No change.)

(b) The registrant shall prepare written requirements for auditing which shall include, at a minimum:

1. Audit scope and procedures including:

i. Completion of risk management program checklist during the final three months immediately preceeding the anniversary date of the registrant's risk management program as required by N.J.A.C. 7:31-3.14;

ii.-v. (No change.)

2. The audit team shall be employees of the registrant or its consultant or both. Only a minority of the members of the audit team may be involved in the day-to-day operation or management of the EHS facility being audited.

7:31-3.12 Summary risk management program statement

(a) The summary risk management program statement shall contain:

1. A description in brief of each program element which covers the registrant's policies, standards and procedures for that program element and identifies the persons or positions responsible for ensuring their implementation. The description of any program element may reference other submittals included in the summary risk management program statement which are applicable to the particular element.

2. The reports of the most recent safety review of design of new and existing EHS equipment meeting the requirements of N.J.A.C. 7:31-3.4 conducted during the previous two years;

3. The report of the most recent hazard analysis and risk assessment meeting the requirements of N.J.A.C. 7:31-3.9 performed on new and existing EHS equipment and operating alternatives within the past four years; and

4. (No change.)

7:31-3.13 Annual reports

(a) The annual report shall contain:

1. An update of the RMP description required to be submitted at N.J.A.C. 7:31-2.6(e)1 showing by additions or deletions any revisions to the risk management program;

2. An update of any portion of the TCPA registration form (STP-010);

3.-4. (No change.)

5. Reports of hazard analyses or risk assessments required by N.J.A.C. 7:31-3.9(b), conducted during the previous 12 months which have not been previously submitted to the Department;

6. List of all hazard analyses or risk assessments required by N.J.A.C. 7:31-3.9(a) conducted during the previous 12 months, the report of which has not been previously submitted to the Department;

7. (No change in text.)

8. Updated catalog of documents prepared pursuant to N.J.A.C. 7:31-3.3(c).

7:31-3.14 Risk management program checklist

(a) Each registrant shall answer the questions on the Risk Management Program Checklist, STP-011, as set forth in Appendix I and made a part of these rules. It is available from the Department at the following address:

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection and Energy
Division of Environmental Safety, Health and Analytical Programs
CN 424
Trenton, New Jersey 08625

The Risk Management Program Checklist shall be submitted:

1.-2. (No change.)

(b) (No change.)

7:31-3.15 Management of modifications (change) to EHS equipment and procedures

(a) Prior to any modification in EHS equipment or procedures which had been the subject of TCPA safety review of new and existing facilities, hazard analysis or risk assessment prior to June 20, 1993, each registrant shall establish a written program to manage such modifications. The program shall require the registrant to:

1. *[Establish criteria which the registrant will use to categorize the proposed change as one whose impact is]* ***Determine whether the change is major or minor by employing the following criteria:*** minor *[and well understood or one which is complex or represents a significant change in EHS equipment design or procedure. The]***, that is, less than one times the concentration criterion beyond the site boundary, or major, that is, equal to or greater than one times the concentration criterion beyond the site boundary. Employment of the*** criteria shall be founded on consequences of the potential release *[to persons outside the site boundary]* ***as determined from dispersion analysis performed in accordance with N.J.A.C. 7:31-3.9(d)*** and shall, along with the documentation, be subject to review by the Department;

2. Identify the scope and the purpose of the change;

3. Compare and update any of the following documents, as may be affected by the change, with the registrant's criteria for design and operation:

i. Process description and process chemistry;

ii. Process flow diagrams;

iii. Piping and instrumentation diagrams;

iv. Facility location maps, site plans and equipment layout;

v. Electrical one-line diagrams;

vi. Electrical *[area]* classification drawings;

vii. Specifications of safety relief devices, and interlocks and controls;

viii. EHS inventories;

ix. EHS equipment specifications;

x. External forces and events data;

xi. Firewater systems piping diagrams;

xii. Sewer system piping diagrams; and

xiii. Standard operating procedures;

4. Determine the impact of the change on the following elements of the registrant's risk management program and update accordingly:

i. Preventive Maintenance Program;

ii. EHS operator training; and

iii. Emergency response;

5. Authorize the change prior to implementation:

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i. Where the impact of the change is minor *[and well understood]*, registrant staff charged with implementing the change shall complete a checklist report that the responsible manager ***or designee as indicated in the RMP*** shall sign affirming performance of requirements at (a)1, 2, 3 and 4 above; and

ii. For a *[more complex or significant]* ***major*** change in EHS equipment design or procedure, the registrant staff charged with implementing the change shall conduct a risk assessment on the items to be changed according to requirements at N.J.A.C. 7:31-3.9(c) through (i) *[which shall be approved and its]* ***the*** report ***of which shall be*** signed by the responsible manager ***affirming performance of requirements at (a)1, 2, 3 and 4 above***. Documents and data from a previous risk assessment for a similar scenario and release quantity may be recertified and revalidated to meet the requirement. The report of risk assessment shall address the items of potential release introduced by the change; and

6. *[Establish a schedule detailing the necessary time periods for key tasks to implement the change.]* ***Complete all tasks prior to implementing the change.***

(b) The following modifications would be exempt from the requirements at (a)5ii above:

1. Modifications based on findings of a risk assessment on the facility; and

2. Modifications resulting from the findings of an EHS accident investigation.

(c) Each registrant shall establish in writing a program to manage changes in risk management program administration. The program shall provide for the succession of line organization staff who implement individual elements of the site risk management program. It shall set forth for each position the qualifications of the successor, *[training of the successor by the incumbent prior to starting, and the duration of the training period]* ***and the requirements for a transition period***.

7:31-3.16 Obligations upon temporary discontinuance of EHS use, storage and handling

(a) The registrant which temporarily discontinues use, storage, handling and generation of a particular EHS at particular EHS equipment, or temporarily stores it at less than the registration quantity, shall continue activities required of the registrant by this chapter until the date a consent agreement, or consent agreement addendum, that is signed by the registrant, is signed by the Department which requires, at a minimum:

1. Performance of a safety review of the particular EHS equipment and procedures in accordance with the requirements of N.J.A.C. 7:31-3.4(d), 60 calendar days prior to bringing the EHS ***back*** on-site;

2. Performance of inspections, tests and checks for proper operation of the particular EHS equipment required by the site RMP, conforming to requirements of N.J.A.C. 7:31-3.6(a)3, 4, 5, 7 and 3.6(b), 30 calendar days prior to bringing the EHS ***back*** on-site; and

3. Performance of EHS operator training activities of the site RMP, conforming to N.J.A.C. 7:31-3.7(a)1, (b), (c), (d), (e) and (f), 10 calendar days prior to bringing the EHS ***back*** on-site.

7:31-3.17 Contractors and contractor employees

(a) The registrant shall include in its risk management program written procedures to insure that work done by persons not directly employed by registrant meets the applicable requirements of the risk management program. The procedures shall apply to specific activities involving the handling of EHSs by a contractor and/or its employees. Temporary employees, either directly hired by the registrant or furnished by a non-employer agency, are subject to the same requirements of this chapter that are applicable to permanent registrant employees.

(b) The procedures shall not apply to contractors providing incidental services which do not influence safety, such as janitorial work, food and drink services or other supply services.

(c) The procedures shall apply to the following activities performed by the contractor and/or its employees:

1. Maintenance or repair, turnaround, major renovation or specialty work on, or adjacent to, a facility handling an EHS;

2. Assistance as EHS operators in facilities handling EHSs; and

3. Assistance during an emergency response *[incident]* ***accident*** involving an EHS, including mitigating the release *[or cleanup of the released EHS]*.

(d) The procedures shall require the contractor to inform, train and evaluate its employees, as applicable to individual assignments, concerning:

1. The requirements of the site's preventive maintenance program;

2. The applicable provisions of the facility standard operating procedure on EHSs; and

3. The applicable provisions of the site's emergency response plan required at N.J.A.C. 7:31-3.10(b).

(e) The procedures shall require that:

1. The registrant, when selecting a contractor, shall obtain information regarding contractor's safety performance and programs;

2. The registrant shall inform the contractors of the known potential fire, explosion or toxic release hazards related to the contractor's work and the facility handling an EHS;

3. The registrant shall explain to the contractors the applicable provisions of the site's emergency response plan;

4. The registrant shall develop and implement safe work practices consistent with N.J.A.C. 7:31-3.6(a)10 to control the entrance, presence and exit of the contractor and/or its employees in facilities handling EHSs; and

5. The registrant shall periodically evaluate the performance of the contractors in fulfilling their obligations as required below:

i. The registrant shall request that the contractor assure that it and/or each of its employees is trained in work practices necessary to safely perform his or her job;

ii. The registrant shall request that the contractor assure that it and/or each of its employees is instructed in the known potential fire, explosion or toxic release hazards related to his or her job and the facility handling an EHS and the applicable provisions of the emergency response plan;

iii. The registrant shall request that the contractor document that it and/or each of its employees has received and understood the training requested by the registrant. The registrant shall request that the contractor prepare a record which contains the identity of its employee, the date of training and the means used to verify that the employee understood the training;

iv. The registrant shall request that the contractor assure that it and/or each of its employees follows the safety rules of the registrant including safe work practices set forth at N.J.A.C. 7:31-3.6(a)10; and

v. The registrant shall request that the contractor advise the registrant of any unique hazards presented by the contractor's work or of any hazards found by the contractor during its work.

SUBCHAPTER 4. WORK PLAN REQUIREMENTS

7:31-4.4 Site data

The Registrant shall submit to the Department the lists of site documents set forth in N.J.A.C. 7:31-4.7.

7:31-4.5 Generic scope of work

(a) The scope of work in the work plan for each registrant required to have an EHSARA performed by a consultant or the Department shall include the following:

1.-2. (No change.)

3. A requirement for the following reviews and, where necessary, the completion or creation of the documents necessary to perform the reviews:

i. A review of process description and process chemistry to define all the possible chemical reactions at the site that may cause or contribute to an EHS accident;

ii. A review or creation of the criteria for design and operation for the EHS equipment and procedures; and

iii. A review of EHS process flow diagrams, piping and instrument diagrams including those of process, utility or service units at the

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site that are interactive with the EHS piping and instrument diagrams, electrical one-line diagrams and site and plot plans for:

(1) Completeness as defined in N.J.A.C. 7:31-1.5 for each referred in (a)3iii above;

(2)-(5) (No change.)

4. A requirement for a safety review which shall meet the requirements of N.J.A.C 7:31-3.4(d). In addition, the safety review shall include at a minimum the following:

i. Annotation or preparation of process flow diagrams, piping and instrument diagrams, electrical one-line diagrams, electrical *[area]* classification drawings, site plan, plot plan, sewer system piping diagrams, and fire water system piping diagrams incorporating drawing title, revision number, date, signature, etc., as necessary to reflect actual conditions. The annotation of the piping and instrument diagrams shall be limited to EHS equipment, run and size of piping, location and function of instruments and location, function and size of valves;

ii. (No change.)

iii. A site plan review to determine at a minimum the following:

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

(3) The measures and precautions designed for the purpose of protecting the facility from external forces and events and for the purpose of controlling EHS releases within the site;

iv. An electrical *[area]* classification review to determine conformance with the most current edition of the National Electrical Code, ANSI/NFPA 70;

v. (No change.)

vi. A mechanical design review comparing the specifications of installed EHS equipment and instrumentation with criteria for design and operation including, but not limited to:

(1)-(3) (No change.)

(4) Safety relief devices and interlocks;

(5)-(6) (No change.)

vii.-viii. (No change.)

ix. An examination of the EHS equipment for evidence of inadequate equipment and piping supports;

5. A requirement for a hazard analysis, meeting the requirements of N.J.A.C. 7:31-3.9 on EHS equipment or operating alternatives using the method of analysis specified in the work plan by the Department;

6. A requirement for risk assessments meeting the requirements of N.J.A.C. 7:31-3.9 on specific pieces of EHS equipment or operating procedures;

7.-12. (No change.)

7:31-4.6 EHSARA report

(a) (No change.)

(b) The EHSARA report shall contain, but not be limited to, the following:

1.-5. (No change.)

6. The recommended risk reduction plan including the listing of all of the deficiencies identified in (b)1 through 5 above, the remedial actions and alternatives to correct the deficiencies and a proposed schedule for implementation.

(c) (No change.)

7:31-4.7 Site documentation

(a) The list of site documents required at N.J.A.C. 7:31-3.3(c), if existing, shall be submitted by the registrant prior to the registrant's meeting with the Department to establish the work plan. Lists of documents shall be grouped by operating or utility unit or area in EHS service at the site giving their document number, name, the EHS involved, most recent revision number and date, file location at the site, and code of sheet size according to ANSI Y14.1-1980 (A, B, C, D, or E) or Deutsche Institut Fuer Normung (DIN) 823-1965 (A4, A3, A2, A1, or A0).

SUBCHAPTER 5. CONFIDENTIALITY AND TRADE SECRETS

7:31-5.2 General provisions

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

(d) A registrant may file a claim with the Department to withhold from public disclosure confidential information required to be submitted to the Department at any time such information is required to be submitted or disclosed to the Department. A registrant may file a petition to withhold from the Department privileged trade secret or security information only at the time of filing the summary risk management statement with the Department pursuant to N.J.A.C. 7:31-2.6(b) and (c) and 2.10, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. All such claims or petitions and any required substantiation shall be submitted in writing on forms provided by the Department in accordance with N.J.A.C. 7:31-5.4 and 5.6, respectively. If the space provided for responses on Department forms is not sufficient, additional pages, properly referenced, may be attached to the required forms to provide complete responses. All the forms can be obtained from:

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection and Energy
Division of Environmental Safety, Health and Analytical Programs
CN 424
Trenton, New Jersey 08625

(e)-(h) (No change.)

7:31-5.3 Exclusions from confidential information and privileged trade secret or security information

(a) Information required to be submitted or disclosed to the Department pursuant to the Act or this chapter which meets the following criteria shall not be considered as confidential information, regardless of any claim or petition either pending or approved:

1.-3. (No change.)

4. Information supplied to the Department by a registrant contained within the Toxic Catastrophe Prevention Act registration form, STP-010, with the exception of information contained in section E of the registration form;

5.-12. (No change.)

(b) (No change.)

7:31-5.4 Confidentiality claims

(a)-(e) (No change.)

(f) The confidential copy, containing the information which the claimant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp both sides. This envelope, together with the confidentiality claim form (which may or may not be enclosed in a separate envelope, at the option of the claimant), shall be enclosed in another envelope for transmittal to the Department, at the following address:

Chief, Bureau of Release Prevention
New Jersey Department of Environmental Protection and Energy
Division of Environmental Safety, Health and Analytical Programs
CN 027
Trenton, New Jersey 08625

(g) (No change.)

(h) The certification on the bottom of the confidentiality claim form shall contain the signature and certification as specified in N.J.A.C. 7:31-2.17(c). Any substantiation form which the claimant submits to support a confidentiality claim shall also contain the signature and certification as specified in N.J.A.C. 7:31-2.17(c).

(i)-(j) (No change.)

7:31-5.5 Determination of confidentiality claims

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

(d) If the Department determines that the information is not the subject of a prior confidentiality determination, the Department shall notify the claimant by certified mail, return receipt requested, of the claimant's right to submit substantiation in support of its claim that the information is entitled to be treated as confidential. The

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substantiation shall be submitted in writing on a form provided by the Department, shall be accompanied by the public copy of the information and the fee set forth in N.J.A.C. 7:31-2.16(g) for review of the substantiation, and shall be received by the Department within 30 days of receipt of the Department's notice. The substantiation shall include, but need not be limited to, the following:

1.-10. (No change.)

(e)-(j) (No change.)

7:31-5.6 Petitions to withhold privileged trade secret or security information

(a) Any registrant required to submit or disclose trade secret or security information pursuant to the Act or this chapter which the registrant believes must be kept privileged so as not to competitively disadvantage the facility, or compromise the security of the facility or its operations, may petition the Department for the right to withhold the privileged trade secret or security information by following the procedures set forth in this section and by paying the fee set forth in N.J.A.C. 7:31-2.16(r). Any registrant of a facility submitting such a petition shall provide complete responses on all required submissions to the Department except for those items which would require the disclosure of privileged trade secret or security information which the petitioner seeks to withhold. For those items, the petitioner shall note that a petition to withhold privileged trade secret or security information has been submitted, along with the date thereof.

(b) Any registrant petitioning the Department for the right to withhold privileged trade secret or security information shall do so in writing on a form provided by the Department at the time of filing the summary risk management program statement, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. A petitioner shall also submit in writing substantiation on a form provided by the Department to support its assertion that the information sought to be withheld is privileged trade secret or security information and pay the fee set forth in N.J.A.C. 7:31-2.16(r) for review of its petition and substantiation in accordance with the following:

1.-4. (No change.)

(c)-(j) (No change.)

SUBCHAPTER 6. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:31-6.2 Procedures for issuance of administrative orders and assessment of civil administrative penalties and payment of such penalties

(a) For violation of the Act or any rule, consent agreement, information request, access request, or order promulgated or issued pursuant to the Act, the Department shall, by issuance of an administrative order and/or notice of civil administrative penalty assessment, notify the violator using certified mail (return receipt requested) or personal service. The Department may, in its discretion, require cessation of violation and/or assess a civil administrative penalty for more than one offense in a single administrative order and/or notice of civil administrative penalty assessment or in multiple administrative orders and/or notices of civil administrative penalty assessment. This administrative order and/or notice of civil administrative penalty assessment shall:

1. Identify the section of the Act, rule, consent agreement, information request, or access request, or order violated;

2. (No change.)

3. For any violation still continuing, order such violation to cease;

4. Specify the amount of the civil administrative penalty to be imposed, if any; and

5. (No change in text.)

(b) Payment of the civil administrative penalty is due and compliance with the terms of an administrative order is required upon receipt by the violator of the Department's final order in a contested case or when an administrative order and/or a notice of civil administrative penalty assessment otherwise becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:31-6.3, the administrative order and/or notice of civil administrative penalty assessment becomes a notice of final order on the 21st calendar day following receipt of the notice of civil administrative penalty assessment by the violator;

2. If the Department denies the hearing request, an administrative order and/or notice of civil administrative penalty assessment becomes a final order upon the violator's receipt, by certified mail or personal service, of notice of such denial; or

3. If an adjudicatory hearing is conducted, an administrative order and/or notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) Any person who violates any provision of N.J.S.A. 13:1K-22 through 13:1K-26 or any rule, regulation, or order promulgated or a court order issued pursuant thereto, or who fails to pay a civil administrative penalty in full is subject, upon order of the court, to a civil penalty not to exceed $10,000 per day of the violation, and each day's continuance of the violation constitutes a separate and distinct violation. Any penalty imposed under this subsection may be recovered with cost in a summary proceeding before the Superior Court and pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

7:31-6.3 Procedures to request an adjudicatory hearing

(a) Within 20 calendar days from receipt of an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Toxic Catastrophe Prevention Act, the violator may request an adjudicatory hearing to contest such administrative order and/or penalty assessment by submitting a written request to the Department which shall include the following information except as provided in (b) below:

1.-2. (No change.)

3. The violator's defenses to each of the Department's findings of fact stated in short and plain terms;

4. An admission or denial of each of the Department's findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

5. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

6.-7. (No change.)

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

(d) During the pendancy of the review and hearing on an administrative order issued pursuant to N.J.A.C. 7:31-2.9(k), the timetable for compliance with those conditions being appealed in the order shall be suspended.

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

(g) Requests for adjudicatory hearings shall be sent to:

Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402
Attention: Hearing Request

7:31-6.4 Civil administrative penalty determination

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

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(d) The Department shall determine the amount of the civil administrative penalty for violations of the Toxic Catastrophe Prevention Act and rule, consent agreement and administrative order issued pursuant thereto on the basis of the category of offense and the frequency of the violation as follows:

TABLE II

Penalty in U.S. Dollars By Offense Category

Categories of Offense	Cite N.J.A.C. 7:31-	First Offense	Second Offense	Third and Each Subsequent Offense
1. Failure to register a new or existing EHS facility as set by the total hazard units at the facility	2.4(a)			
a. Less than 25 hazard units		5,000	10,000	25,000
b. 25 and more hazard units		10,000	20,000	50,000
2. Construction of a new EHS facility or utilization of an existing facility for a new EHS service without Departmental approval, when required	2.4(c)	10,000	20,000	50,000
3. Startup of a new EHS facility without an approved risk management program	2.4(d)	10,000	20,000	50,000
4. For a site with an approved RMP, placing a new EHS facility into service or to utilize an existing facility for a new EHS service without Departmental approval	2.4(e)	5,000	10,000	25,000
5. Failure to complete the requirements of an established RMP or its approved EHSARA work plan and performing a safety review and hazard analysis prior to modifying an existing EHS facility, each requirement	2.4(f)	2,500	5,000	12,500
6. Failure to handle, use, manufacture, generate or store an EHS in compliance with the Act and rules, each requirement	2.4(g)	2,500	5,000	12,500

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7. Failure to comply with the requirements of an approved RMP, each requirement	2.4(h)	2,500	5,000	12,500
8. Failure to provide information requested by the Department	2.4(i)	2,000	4,000	10,000
9. Failure to submit an updated registration form, STP-010, within 30 days after a change occurs which makes any section of the form incorrect or incomplete	2.5(e)			
a. Failure to report a change in responsible manager		5,000	10,000	25,000
b. Failure to report increased hazard units on form STP-010, Section D		5,000	10,000	25,000
1. Less than 25 hazard units		5,000	10,000	25,000
2. 25 and more hazard units		10,000	20,000	50,000
c. Failure to report any other change		1,000	2,000	5,000
10. Failure to comply with conditions of a consent agreement addendum setting forth requirements of N.J.A.C. 7:31-3.16, each condition	2.5(i)	2,500	5,000	12,500
11. Failure to submit summary risk management program statement on time	2.6(b)			
a. Less than 30 days		1,000	2,000	5,000
b. 30 through 59 days		2,500	5,000	12,500
c. More than 59 days		5,000	10,000	25,000
12. Failure to provide a description of each program element	2.6(e)1	2,000	5,000	10,000

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13. Failure to return signed consent agreement/ addendum or to submit proposals to correct any deficiencies in the draft consent agreement/ addendum within 60 days of receipt of the draft consent agreement/addendum	2.6(g) or 2.12(e)	5,000	10,000	25,000
14. Failure to comply with conditions of a consent agreement or administrative order, each condition	2.6(h), 2.9(k) or 2.12(e)	2,500	5,000	12,500
15. Failure of a new owner or operator of an existing EHS facility to adopt or obtain an approved risk management program before operating EHS equipment	2.8(a) 2.8(b)	5,000	10,000	25,000
16. Failure to submit site data as required by N.J.A.C. 7:31-4.4	2.9(b)			
a. By registrants who indicated they did not have an RMP	2.9(b)1	2,500	5,000	12,500
b. Registrants who did not have an established RMP, as determined by the Department	2.9(b)2	2,500	5,000	12,500
17. Failure to nominate 3 consultants to perform the EHSARA on time	2.9(e)	5,000	10,000	25,000
18. Failure to nominate on time an additional 3 consultants, upon determination of the inadequacy of the first 3	2.9(f)2	5,000	10,000	25,000
19. Failure to execute contract with chosen consultant within 45 days of receipt of notification of the name of the consultant	2.9(g)	5,000	10,000	25,000

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20.	Failure to initiate an EHSARA according to the schedule in the work plan	2.9(h)	5,000	10,000	25,000
21.	EHSARA not performed by consultant according to the schedule in the work plan	2.9(h)	5,000	10,000	25,000
22.	Failure of owner or operator to make available for Department review a report of EHSARA in accordance with the schedule of the work plan when a consultant hired by the owner or operator prepares the report of EHSARA.	2.9(i)	5,000	10,000	25,000
23.	Failure to implement a risk reduction plan as directed by the issuance of an administrative order	2.9(k)	5,000	10,000	25,000
24.	Failure of owner or operator to submit a summary risk management program statement at least 90 days prior to construction of a new EHS facility	2.10(a)2	5,000	10,000	25,000
25.	Failure to update the safety review and risk assessment to reflect latest revision of pertinent documents prior to placing equipment in EHS service.	2.10(b)	5,000	10,000	25,000
26.	Failure to manage the change of existing EHS equipment and procedures in accordance with N.J.A.C. 7:31-3.15	2.11(a)	2,500	5,000	12,500
27.	Failure to grant access to Department employees or agents for inspections	2.12(a)	5,000	10,000	25,000
28.	Failure to assist Department employees in performances of all aspects of any inspection	2.12(a)	5,000	10,000	25,000

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29. Failure to provide information or grant access to Department employees or agents during an emergency condition	2.12(a)	10,000	20,000	50,000
30. Failure to submit an annual report on time	2.14			
a. Less than 30 days		1,000	2,000	5,000
b. 30 through 59 days		2,000	4,000	10,000
c. More than 59 days		5,000	10,000	25,000
31. Failure to authorize an insurance carrier to release information requested by the Department within 30 days of the request	2.15(d)	5,000	10,000	25,000
32. Failure to pay any annual fee	2.16	5,000	10,000	25,000
33. Failure to properly certify documents	2.17	5,000	10,000	25,000
34. Failure of consultant to obtain approval in writing from the Department to subcontract any of the work of the EHSARA or to change the staff named to do any of the work of the EHSARA	2.18(b)	2,000	4,000	10,000
35. Failure to operate an EHS facility, to which the Department has granted an exemption from N.J.A.C. 7:31-3, according to information provided to the Department to obtain an exemption	2.19	5,000	10,000	25,000

(e) The Department may assess a civil administrative penalty for a violation of any provision of N.J.A.C. 7:31 for which no penalty amount is specified under N.J.A.C. 7:31-6.4(d). The Department shall base the amount of such a penalty assessment upon the following factors:

1. The amount of the penalty established under N.J.A.C. 7:31-6.4(d) for a violation which is comparable to the violation in question. Comparability is based upon the nature of the violations (for example, violations of recordkeeping completeness, reporting completeness or performance of risk management program requirements) and the nature and extent of the extraordinarily hazardous accident risk likely to result from the type of violation; and

2. The factors listed in (h) below;

(f) (No change.)

(g) If the registrant has not committed the same offense within a three year period of an offense, the next penalty will be assessed at the frequency of violation level of the prior offense. The Department may, in its discretion, treat an offense as a first offense solely for civil administrative penalty determination purposes if the violator has not committed the same offense in the five years immediately preceding the date of the pending offense.

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (d) above under N.J.A.C. 7:31-2.4(f), 2.4(g), 2.4(h), 2.5(i), 2.6(h), 2.9(k), 2.12(e) and 2.11(a) to assess a civil administrative penalty amount no greater than the maximum penalty based upon any or all of the following factors:

1. The nature of the violation;

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2. The nature and extent of the extraordinarily hazardous accident risk;
3. The nature, timing and effectiveness of prevention measures to minimize extraordinarily hazardous accident risks in addition to those minimally required by applicable statute or rule;
4. The compliance history of the violator;
5. The number of times and the frequency with which the violation occurred;
6. The severity of the violation; and/or
7. Any other mitigating, extenuating or aggravating circumstances.

OFFICE OF ADMINISTRATIVE LAW NOTE: Appendices I and II of N.J.A.C. 7:31 are repealed by the Department of Environmental Protection and Energy, but are not reproduced below. The text of the repealed Appendices may be found in the New Jersey Administrative Code.

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

Legal Name of Registrant _____

Facility Name _____

Nature of Business _____

N.J. Employer ID # _____ APEDS # _____

NJPDES # _____ PWS # _____

Facility Location _____
No. *Street*

_____
Municipality *County*

Registrant's Mailing Address _____
No. *Street*

_____
City *State* *Zip*

Name of Responsible Manager _____

Title _____ Telephone No. ( ) _____

CERTIFICATIONS

Highest Ranking Individual with *[Direct Knowledge and]* Overall Responsibility for this Information

I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties including fines or imprisonment or both, for submitting false, inaccurate or incomplete information.

Signature _____ Date _____

Name (Print) _____ Title _____

Principal Executive Officer, General Partner or Proprietor, Agency *[Director]* ***Head*** or *[Ranking]* ***Other Authorized*** Official:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties including the possibility of fines or imprisonment or both, for submitting false, inaccurate or incomplete information.

Signature _____ Date _____

Name (Print) _____ Title _____

Check One: ____ Initial Submittal
____ Annual Submittal—Covering Period from _____ to _____

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STP-011
2/93

RISK MANAGEMENT CHECKLIST

Questions shall be answered in the affirmative or the negative, and when the answer is negative the registrant shall provide an explanation. Use separate pages.

DOCUMENTATION

The following are the questions on supporting documentation (See N.J.A.C. 7:31-3.3):

	Yes	No	Comments
1. Is the following updated documentation including appropriate revision dates covering process information maintained at the site and available for inspection by the Department:			
i. Process chemistry?	____	____	_____
ii. Report of inventory of each extraordinarily hazardous substance for the past 12 months?	____	____	_____
iii. Reports of hazard analyses, risk assessments, safety reviews of new and existing equipment performed during the previous six calendar years.	____	____	_____
iv. Accident investigation procedures, records and reports covering EHS accidents for the past six calendar years?	____	____	_____
v. Updated process flow diagram of each EHS facility with appropriate dates indicated?	____	____	_____
vi. Updated piping and instrumentation diagrams?	____	____	_____
vii. Standard operating procedures?	____	____	_____
viii. Site wide safety procedures?	____	____	_____
ix. Emergency response program and plan?	____	____	_____
x. Description of the EHS operator training program including job classifications and job descriptions for EHS operators and its records?	____	____	_____
xi. Annual calendar year tabulation of EHS operator training conducted for the last three calendar years?	____	____	_____
xii. Topographic maps?	____	____	_____
xiii. Site plan?	____	____	_____
xiv. EHS equipment specifications including instrument and piping specifications?	____	____	_____
xv. National Electrical Code *[area]* classification diagrams for the EHS facility and adjoining areas?	____	____	_____
xvi. Electrical one line diagrams?	____	____	_____
xvii. Fire water system piping diagrams for the site?	____	____	_____
xviii. Sewer system piping diagrams for the site?	____	____	_____
xix. Criteria for design and operation used at the site?	____	____	_____
xx. Preventive maintenance program and records covering EHS equipment?	____	____	_____
xxi. Annual calendar year tabulations of EHS equipment inspected and tested versus scheduled for the last three calendar years?	____	____	_____
xxii. Audit procedures and reports as required at N.J.A.C. 7:31-3.11 for the last three calendar years?	____	____	_____

SAFETY REVIEW

The following are the questions on safety review of new and existing facilities (See N.J.A.C. 7:31-3.4):

1. Are all new EHS facilities designed, installed and operated in accordance with the criteria for design and operation?	____	____	_____
2. Have the criteria for design and operation been identified for each new EHS facility, and have they been compared with the following information describing the EHS equipment and operations:			
i. Process description and process chemistry?	____	____	_____
ii. Process flow sheet?	____	____	_____
iii. Piping and instrumentation diagrams?	____	____	_____
iv. EHS facility location maps, site plans and equipment layout?	____	____	_____
v. Electrical one-line diagrams?	____	____	_____
vi. Electrical *[area]* classification drawing?	____	____	_____
vii. Specifications of safety relief devices and interlocks and controls?	____	____	_____
viii. Specifications for materials of construction?	____	____	_____
ix. EHS inventories?	____	____	_____
x. EHS equipment specifications?	____	____	_____
xi. External forces and events data?	____	____	_____
xii. Firewater system piping diagrams?	____	____	_____
xiii. Sewer system piping diagrams?	____	____	_____
xiv. Procedures and conditions for normal, abnormal and emergency conditions prepared pursuant to N.J.A.C. 7:31-3.5(c)2,3,4,6,7,8,9,10,11,12,14 and 15?	____	____	_____
3. Has the identification and comparison required in 2 above been documented?	____	____	_____
4. Has a report of the result of each safety review of design of each new EHS facility been prepared?	____	____	_____

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i. Does each report contain a list of the criteria for design and operation upon which the design is based? ____ ____ ____

ii. Does each report identify the new EHS facility, the EHS equipment items reviewed, the drawings and documents reviewed, the date(s) of the review, the date of issue of the report, and the name, position and affiliation of the persons who performed the review? ____ ____ ____

iii. Does each report explain where the design of the new EHS facility deviates from the listed consensus standards of the criteria for design and operation? ____ ____ ____

iv. Does each report explain the reasoning upon which an intended deviation from the listed consensus standard is based? ____ ____ ____

The following are the questions on safety review of existing EHS equipment (See N.J.A.C. 7:31-3.4):

1. Has a safety review of all existing EHS equipment and procedures been performed each calendar year no sooner than six months or no longer than 18 months from the previous safety review? ____ ____ ____

2. Has each safety review included:

   i. A visual inspection of the EHS equipment or review of up-to-date inspection records to determine if process flow diagrams, piping and instrument diagrams, electrical one line diagrams, electrical *[area]* classification, and sewer and fire system piping diagrams reflect actual conditions with respect to EHS equipment runs and sizes of pipe, location and function of instruments, and location, function and size of valves? ____ ____ ____

   ii. A visual inspection of the EHS equipment or review of up-to-date inspection records against design document to determine if safety relief devices and emergency systems such as deluges, interlocks, controls, back-up systems and alarms are functioning as designed? ____ ____ ____

   iii. A review to determine if actual operating conditions of flow, temperature and pressure, process chemistry and raw material feeds and specifications are within the limits of the current design criteria of individual equipment items? ____ ____ ____

   iv. Inspection of the EHS equipment and procedures and interviews of site personnel to determine if standard operating procedures reflect actual conditions? ____ ____ ____

3. Have the deviations of procedure or EHS equipment found by each safety review been documented? ____ ____ ____

4. Have deviations found as a result of the visual inspections or reviews specified in 2i, iii and iv above been immediately discontinued? ____ ____ ____

5. Have the safety systems found to be inoperable during the inspection specified in 2ii above been immediately returned to operational status? ____ ____ ____

6. Has a report of the results of each safety review been prepared and does it:

   i. Identify the facility in EHS service? ____ ____ ____

   ii. Identify the EHS equipment, procedures, drawings and documents reviewed? ____ ____ ____

   iii. Describe the deviations found and the corresponding actions taken pursuant to (2) above? ____ ____ ____

   iv. Identify the name, position and affiliation of the persons who performed the review, the date(s) of the review and the date of issue of the report? ____ ____ ____

7. Has the report been distributed to the responsible manager? ____ ____ ____

STANDARD OPERATING PROCEDURES

The following are the questions on Standard Operating Procedures (See N.J.A.C. 7:31-3.5):

1. Are the standard operating procedures written in English and in language of fluency understandable by EHS operators? ____ ____ ____

2. Are there versions of each of the standard operating procedures written in the language of fluency of EHS operators not fluent in English? ____ ____ ____

3. Is a *[hard]* copy of each standard operating procedure and a copy of the material safety data sheets or fact sheets readily available to EHS operators? ____ ____ ____

   ***i. Are procedures for emergency shutdown available in hard copy?** ____ ____ ____*

4. Does each standard operating procedure include:

   i. Simplified process flow sheets and a process description defining the operation and showing flows, temperatures and pressures? ____ ____ ____

   ii. Procedures and conditions for normal operations? ____ ____ ____

   iii. A description of abnormal conditions, including the control and mitigating procedures to be followed to return to normal conditions? ____ ____ ____

   iv. A description of emergency conditions which could occur including the control and mitigating procedures to be followed to reduce the impact of the emergency conditions? ____ ____ ____

   v. Pre-start procedures covering testing for leak tightness prior to charging the EHS? ____ ____ ____

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vi. Startup procedures including conditions to be maintained during startup? ____ ____ ____

vii. Shutdown procedures including provisions for normal and emergency shutdown and details on the condition of EHS equipment to be maintained after shutdown? ____ ____ ____

viii. A description of the type, location and purpose of safety relief devices, interlocks and alarms with their respective activations points indicated? ____ ____ ____

ix. Sampling procedures addressing apparatus and specific steps involved in the taking of samples? ____ ____ ____

x. Safety procedures related to each specific operation in the standard operating procedures? ____ ____ ____

xi. Procedures to prepare EHS equipment for maintenance and inspection of maintenance work upon completion prior to placing equipment in EHS service? ____ ____ ____

xii. Log sheets and checklists where appropriate to the operation? ____ ____ ____

xiii. A statement as to the number of EHS operators required to meet safety need for each operation with requirements for shift coverage? ____ ____ ____

xiv. A requirement that an EHS operator be in attendance at the EHS site and be able to acknowledge alarms and take corrective action at all time during specified activities of EHS handling, use, manufacture, storage or generation? ____ ____ ____

5. Have modifications to the standard operating procedures been made in accordance with N.J.A.C. 7:31-*[2.11 and]* 3.15? ____ ____ ____

6. Have modifications been incorporated in the standard operating procedure before being implemented? ____ ____ ____

***7. Has a current table of contents of each EHS standard operating procedures listing the items of (c) 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?** ____ ____ ____*

PREVENTIVE MAINTENANCE

The following are the questions for the preventive maintenance program (See N.J.A.C. 7:31-3.6):

1. Have the preventive maintenance program documents been written, filed at the site, and are they available for inspection by the Department? ____ ____ ____

2. Has all EHS equipment needed to be included in the preventive maintenance program been identified? ____ ____ ____

3. Have all modifications been approved *[and authorized by the responsible manager]* ***pursuant to N.J.A.C. 7:31-3.15***? ____ ____ ____

4. Have the internal and external inspection of EHS equipment prescribed by the preventive maintenance program been performed as scheduled? ____ ____ ____

   i. Are the frequencies of inspection sufficient to prevent the failure of the equipment? ____ ____ ____

5. Have the inspections or tests prescribed by the preventive maintenance program for pressure safety devices in EHS service been performed as scheduled? ____ ____ ____

6. Has the safety instrumentation in EHS service been checked for proper operation, as prescribed by the preventive maintenance program? ____ ____ ____

7. Have the procedures for commissioning new or modified EHS equipment and decommissioning existing EHS equipment prescribed by the preventive maintenance program been followed? ____ ____ ____

8. Have emergency power supply systems been tested in accordance with the schedule prescribed by the criteria for design and operation? ____ ____ ____

9. Has the training of the employees assigned to perform maintenance work on EHS equipment been performed in accordance with the requirements of the preventive maintenance program? ____ ____ ____

10. Have the procedures to insure that work on or near EHS equipment performed by contractors is done in accordance with the requirements of the preventive maintenance program and N.J.A.C. 7:31-3.17 been followed? ____ ____ ____

11. Have the permits and check lists for all EHS equipment entries, lockouts, and welding and burning operations required by the preventive maintenance program been used? ____ ____ ____

12. Have all inspection reports and preventive maintenance testing and training information been filed in a centralized location as required by the preventive maintenance program? ____ ____ ____

13. Has the record keeping system prescribed by the preventive maintenance program been followed? ____ ____ ____

OPERATOR TRAINING

The following are the questions for the EHS operator training program (See N.J.A.C. 7:31-3.7):

1. Has the training program for EHS operators been written? ____ ____ ____

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2. Has a job description been written for each EHS operator position which includes the duties and responsibilities, the education, experience and training necessary to qualify for that position? ____ ____ ____

3. Have the evaluation procedures prescribed by the EHS operator training program to determine whether an EHS operator has demonstrated the ability to carry out the duties and responsibilities of a specific position been used? ____ ____ ____

4. Have the time periods prescribed by the EHS operator training program for in house training for each position been followed? ____ ____ ____
   i. Has the plan established for tracking the training progress of each EHS operator at regular intervals prescribed by the EHS operator training program been followed? ____ ____ ____
   ii. Has the maximum period of time been established within which the EHS operator must achieve qualified status and is it being followed? ____ ____ ____

5. Have established procedures been followed to insure that work done by contractors to assist as EHS operators is in accordance with the requirements of the standard operating procedure and with N.J.A.C. 7:31-3.17? ____ ____ ____

6. Has the training EHS operators received during the previous 12 months included:
   i. For new employees, general orientation and initial training as prescribed by the EHS operator training program? ____ ____ ____
   ii. For newly assigned EHS operators, the training on specific extraordinarily hazardous substance activities prescribed by the EHS operator training program? ____ ____ ____
   iii. For newly assigned EHS operators, the on-the-job training as prescribed by the EHS operator training program? ____ ____ ____
   iv. The refresher training prescribed by the EHS operator training program? ____ ____ ____

7. Have the evaluations of EHS operators included oral and written tests? ____ ____ ____

8. Have EHS operators qualified within the maximum periods established for training in each EHS position? ____ ____ ____

9. Do all personnel responsible for training and evaluating EHS operators meet the qualifications prescribed for instructors and evaluators by the EHS operator training program? ____ ____ ____

10. Have all training, evaluations and qualifying activities been documented as prescribed by the EHS operator training program? ____ ____ ____

11. Has a tabulation of EHS operator training performed during the previous calendar year been prepared, filed and submitted to the responsible manager? ____ ____ ____

ACCIDENT INVESTIGATION

The following are the questions for EHS accident investigation program (See N.J.A.C. 7:31-3.8):

1. Have the written procedures for investigating all EHS accidents prescribed by the accident investigation program been followed for each accident? ____ ____ ____

2. Were the EHS accident investigations completed within the time frame prescribed by the EHS accident investigation program? ____ ____ ____

3. Is there a written accident investigation report of each EHS accident that occurred during the past calendar year? ____ ____ ____

4. Did management review each EHS accident report completed during the past calendar year? ____ ____ ____

5. Did management implement the recommendations in each EHS accident investigation report? ____ ____ ____

6. Is there a requirement to include the review of EHS accident reports in operator refresher training and maintenance training? ____ ____ ____

7. Does each EHS accident report include:
   i. The date, time and location of the EHS accident? ____ ____ ____
   ii. The identity, amount and duration of the release or potential EHS release? ____ ____ ____
   iii. The EHS equipment, materials, procedures and personnel involved? ____ ____ ____
   iv. A detailed chronological description of the accident including all the facts related to the EHS accident? ____ ____ ____
   v. The consequences of the EHS accident including the number of people injured or killed and the impact on the community? ____ ____ ____
   vi. The identity of the basic and contributory causes of the EHS accident? ____ ____ ____
   vii. The determination of whether the EHS accident was caused by human error, equipment failure, or procedural inadequacy? ____ ____ ____
   viii. Recommend actions addressing human error, equipment failure or procedural inadequacy to be implemented to prevent a recurrence? ____ ____ ____
   ix. Schedule for implementation of recommended actions? ____ ____ ____
   x. Signatures and position titles of the investigators? ____ ____ ____

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8. Do the EHS accident investigation records include:
   i. A separate file of EHS accident reports for the Toxic Catastrophe Prevention Act program? ____ ____ ____
   ii. A monthly list on which the implementation status of all active recommendations for corrective action is updated? ____ ____ ____
   iii. An updated list of employees of the registrant or contractors or any other person *[involved in]* ***who directly or indirectly contributed to*** EHS accidents? ____ ____ ____
   iv. End of calendar year summary reports consisting, at a minimum, of the following:
      (1) A list and brief description of each EHS accident? ____ ____ ____
      (2) An identification of the cause of each EHS accident as human error, equipment failure, or procedural inadequacy? ____ ____ ____
      (3) A consolidated schedule of implementation and completion status covering all EHS accidents? ____ ____ ____

RISK ASSESSMENT

The following are the questions for the risk assessment program for specific pieces of EHS equipment or operating alternative (See N.J.A.C. 7:31-3.9):

1. Was a risk assessment conducted on each EHS facility, each new EHS operating alternative or each ***required*** modification ***to EHS equipment and procedures*** identified at N.J.A.C. 7:31-3.15? ____ ____ ____
2. Was a risk assessment conducted on existing EHS equipment or operating alternative at least once every *[four]* ***five*** calendar years ***no sooner than 54 months or no later than 66 months*** from the previous hazard analysis satisfying the requirements of N.J.A.C. 7:31-3.9(c)? ____ ____ ____
3. Did each risk assessment include a hazard analysis performed in accordance with N.J.A.C. 7:31-3.9(c)? ____ ____ ____
4. Was a dispersion/consequence analysis performed for the maximum release rate or quantity scenario identified in (3) above and for each successively lower release rate or quantity scenario in accordance with N.J.A.C. 7:31-3.9(d)? ____ ____ ____
5. For each release scenario at (4) above as indicating that five times the concentration criterion extends beyond the site boundary:
   i. Was an evaluation of state of the art performed? ____ ____ ____
   ii. Was a risk reduction plan developed utilizing state of the art risk reduction measures?
   iii. Was a schedule developed for its implementation? ____ ____ ____
   iv. Were all estimates and analyses performed as part of the risk assessment properly documented? ____ ____ ____
6. For each release scenario identified in (4) above as indicating that one times the concentration criterion extends beyond the site boundary:
   i. Was either a state of the art evaluation performed in accordance with (5) above? or
   ii. Was the frequency of release occurrence determined?
   iii. If the frequency was greater than or equal to 10^{-4} per year, was a state of the art evaluation performed? ____ ____ ____
7. Was a report of the risk assessment prepared for each new EHS facility or modification or existing EHS facility in accordance with N.J.A.C. 7:31-3.9(g)? ____ ____ ____
8. Was each report of risk assessment submitted to the responsible manager? ____ ____ ____
9. Did the responsible manager implement the risk reduction plan, and employ procedures such as status reports to ensure that the risk reduction measures were implemented? ____ ____ ____

EMERGENCY RESPONSE

The following are the questions for emergency response planning (See N.J.A.C. 7:31-3.10):

1. Has the approved written emergency response program been updated to reflect changes approved by the responsible manager during the calendar year? ____ ____ ____
2. Have the copies of the distributed emergency response plan been maintained in an up-to-date condition? ____ ____ ____
3. Has the scheduled initial and refresher emergency response training for all site employees been performed during the calendar year? ____ ____ ____
   i. Did the emergency response training include:
      (1) Alarm identification and response? ____ ____ ____
      (2) Response to EHS ***accidental*** release? ____ ____ ____
      (3) Use of required emergency response equipment? ____ ____ ____
      (4) Evacuation procedures? ____ ____ ____
4. Has the scheduled initial and refresher emergency response training for the site-wide and EHS facility emergency response teams been performed during the calendar year? ____ ____ ____

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5. Has emergency response training been performed whenever a team member's responsibilities or designated actions have changed or when the emergency response plan changed? ____ ____ ____
   i. Did emergency response training in (4) and (5) above include:
      (1) Alarm identification and response? ____ ____ ____
      (2) Response to EHS ***accidental*** release? ____ ____ ____
      (3) Use of emergency protective equipment? ____ ____ ____
      (4) Rescue procedures? ____ ____ ____
      (5) Evacuation procedures? ____ ____ ____
      (6) Medical assistance? ____ ____ ____
      (7) Action plans for dealing with specific EHS ***accident*** release scenarios? ____ ____ ____
      (8) Training in specific assigned emergency response duties? ____ ____ ____
6. Have the scheduled emergency response exercises for *[site-wide and EHS]* ***each registered*** facility *[teams]* ***and the site*** been performed during the calendar year in accordance with N.J.A.C. 7:31-3.10(a)4? ____ ____ ____
7. Has there been a written assessment of the emergency response plan after each implementation or emergency response exercise including but not limited to:
   i. The adequacy of the emergency response plan? ____ ____ ____
   ii. The implementation of the emergency response plan during the two exercises and any emergencies that occurred during the calendar year? ____ ____ ____
   iii. The performance of the personnel participating in the two exercises and any emergencies that occurred during the calendar year? ____ ____ ____
   iv. The adequacy of first aid and medical treatment procedures during the two exercises and any emergency that occurred during the calendar year? ____ ____ ____
   v. The adequacy of the recording of events? ____ ____ ____
8. Has there been a written assessment of the adequacy or need for emergency response equipment after each implementation or emergency response exercise including but not limited to:
   i. Emergency response communications system? ____ ____ ____
   ii. Emergency power and lighting systems? ____ ____ ____
   iii. The distribution of the emergency response plans, plot plans and maps of the surrounding community? ____ ____ ____
   iv. EHS detection system? ____ ____ ____
   v. Self-contained breathing apparatus? ____ ____ ____
   vi. Fire fighting equipment? ____ ____ ____
   vii. Medical supplies? ____ ____ ____
   viii. Personal protective equipment? ____ ____ ____
   ix. Equipment necessary to reduce the quantity or duration of EHS release, such as capping devices, leak repair kits and spill containment? ____ ____ ____
9. Was a remedial action plan prepared with a schedule for completion to correct any inadequacies identified in (7) and (8) above? ____ ____ ____
10. Has the meteorological station been properly maintained in working condition? ____ ____ ____
11. Has the site's emergency response plan been coordinated with the emergency response plan of the local emergency planning committee during the calendar year? ____ ____ ____
12. Has a written emergency response plan been prepared in accordance with N.J.A.C. 7:31-3.10(b) and is it maintained at the site? ____ ____ ____
13. Has the list of the emergency response equipment and supplies and their location at the site been updated in the last six months? ____ ____ ____
14. Are the titles of the site emergency coordinator and alternates current? ____ ____ ____
15. Is the designation of emergency operators required by N.J.A.C. 7:31-3.10(b)7i current? ____ ____ ____
16. Has the Department's emergency communications center been notified immediately for each EHS accident or imminent EHS accident at the site as prescribed by the plan? ____ ____ ____
17. Has each accidental release been properly evaluated to determine if it should be reported in accordance with N.J.A.C. 7:31-3.10(b)7v, and all releases properly recorded? ____ ____ ____
18. Have the written procedures been implemented for timely and appropriate notification of, and coordination with, the emergency response coordinator for the local emergency response planning committee (LEPC)? ____ ____ ____
   i. Names and telephone numbers of coordinators? ____ ____ ____
   ii. Submittal of "Emergency Response Guide" if requested by the LEPC? ____ ____ ____
   iii. Notification of coordinators of schedule of emergency response exercise? ____ ____ ____

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AUDIT REQUIREMENTS

The following are the questions on Audit Requirements (See N.J.A.C. 7:31-3.11)

1. Was an annual audit of the risk management program conducted in accordance with N.J.A.C. 7:31-3.11(a)? ____ ____ ____
2. Was a written report prepared which includes as a minimum:
   - i. Completion of the risk management checklist established under N.J.A.C. 7:31-3.14? ____ ____ ____
   - ii. A list of deficiencies found in completing the checklist? ____ ____ ____
   - iii. Recommendations for remedial action? ____ ____ ____
   - iv. Submission of audit report to the responsible manager? ____ ____ ____
   - v. Requirements for review and implementation of remedial actions, including schedule, by the facility? ____ ____ ____
3. Was the audit team an independent consultant? ____ ____ ____
4. Was the audit team employees of the registrant, a majority of whom are not involved in day-to-day operations? ____ ____ ____

ANNUAL REPORTS

The following are the questions on Annual Reports (N.J.A.C. 7:31-3.13)

1. Was an annual report prepared and did it contain: ____ ____ ____
   - i. An update of the RMP description prepared in conformance with N.J.A.C. 7:31-3.12(a)1? ____ ____ ____
   - ii. A complete update of Section D of the registration form? ____ ____ ____
   - iii. A risk management program checklist for the site completed during the previous 3 months? ____ ____ ____
   - iv. A list of all safety reviews conducted during the previous 12 months? ____ ____ ____
   - v. Reports of risk assessments and hazard analyses conducted during the previous 12 months which had not been previously submitted to the Department? ____ ____ ____
   - vi. A list of all risk assessments and hazard analyses conducted during the previous 12 months which had not been previously submitted to the Department? ____ ____ ____
   - vii. A copy of the end of year summary report of EHS accidents? ____ ____ ____
   - viii. Updated catalog of documents prepared pursuant to N.J.A.C. 7:31-3.3(c)? ____ ____ ____

MANAGEMENT OF CHANGE

The following are the questions on Management of Modifications (Change) to EHS equipment and procedures (See N.J.A.C. 7:31-3.15)

1. Has the written program been established to manage modification that conforms to the requirements of N.J.A.C. 7:31-3.15? ____ ____ ____
2. For each modification (change) did you:
   - i. Categorize the proposed change as minor or *[complex]* ***major***? ____ ____ ____
   - ii. Identify the scope and purpose of the change? ____ ____ ____
   - iii. Compare the change with the criteria for design and operation and update the documents as outlined in N.J.A.C. 7:31-3.15(a)3? ____ ____ ____
   - iv. Determine the impact of the changes on the following elements of the risk management program and update them accordingly? ____ ____ ____
     - a. Preventive Maintenance Program ____ ____ ____
     - b. EHS Operator Training ____ ____ ____
     - c. Emergency Response ____ ____ ____
   - v. Properly authorize the change prior to implementation? ____ ____ ____
   - vi. *[Established a schedule detailing the necessary time periods for key tasks to implement the change?]* ***Complete all tasks prior to implementing the change?*** ____ ____ ____
3. Has a written program been established to manage changes in the risk management program administration that conforms to N.J.A.C. 7:31-3.15(c)? ____ ____ ____

CONTRACTORS

The following are questions on contractors and contractor employees (See N.J.A.C. 7:31-3.17)

1. Have written procedures been included in the risk management program to insure that work done by persons not directly employed by you meet the applicable requirements of the risk management program in conformance with N.J.A.C. 7:31-3.17? ____ ____ ____
2. For each occurrence when a contractor was used did you:
   - i. Obtain information regarding the contractor's safety performance and programs? ____ ____ ____
   - ii. Inform the contractor of the known potential fire, explosion or toxic release hazards related to the contractor's work and the facility handling an EHS? ____ ____ ____
   - iii. Explain to the contractor the applicable provisions of the site's emergency response plan? ____ ____ ____

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iv. Properly control the entrance, presence and exit of the contractor and/or its employees in facilities handling EHS's? _____ _____ _____

v. Evaluate the performance of the contractor in compliance with N.J.A.C. 7:31-3.17(e)5? _____ _____ _____

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Rules
Hospital Reporting of Uniform Bill-Patient Summaries
Adopted Amendments: N.J.A.C. 8:31B-2
Adopted New Rule: N.J.A.C. 8:31B-3.70

Proposed: April 19, 1993 at 25 N.J.R. 1660(a).

Adopted: June 24, 1993 by Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: June 25, 1993 as R.1993 d.362, **with substantive changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date: July 19, 1993.

Expiration Date: August 17, 1995.

Summary of Agency-Initiated Changes:

Following discussion at the Health Care Administration Board meeting, it was determined that, as a result of the following comments of the Health Research and Educational Trust and the Hospital Association, the changes proposed at N.J.A.C. 8:31B-2.5(f)3 and (i) needed further study and that the text of the rule should not be changed but revert back to its former state. The Department has, therefore, replaced the text of N.J.A.C. 8:31B-2.5(f)3, and deleted the change proposed at (i), since it is related to the data reporting issue.

Summary of Public Comments and Agency Responses:

COMMENT: Hospital Association. The Department has proposed the deletion of N.J.A.C. 8:31B-2.5(f)3, which allows hospitals the flexibility to choose an additional intermediary for the purpose of producing periodic data editing and verification reports. Since 1981, hospitals have contracted with HRET to perform this function. The existing regulatory provision which allows hospitals the flexibility to choose an independent data editing and verification intermediary, commonly referred to as the data reporter, is an extremely important part of the quality assurance process and "check and balance" system which currently provides a necessary safeguard and review of hospital data. The retention of this independent data verification process is also important since the Department has selected a major insurance company (Blue Cross/Blue Shield of New Jersey) as the data intermediary.

Accurate health care and hospital cost, charge, utilization, and quality data will continue to be an important information resource to those involved in the ongoing health care reform debate, and of particular utility to the Essential Health Services Commission as it begins its work later this year. Threatening the accuracy and reliability of the uniform bill data at this time by proposing the elimination of the important data editing and verification process (at N.J.A.C. 8:31B-2.5(f)3) is not prudent.

RESPONSE: As a result of the Hospital Association's comment, above, the Health Care Administration Board has decided to table the matter for future discussion. Therefore, the Department has restored the text at N.J.A.C. 8:31B-2.5(f)3 since it is related to the data reporting issue, proposed N.J.A.C. 8:31B-2.5(i) is not adopted. The Department may propose amendments regarding this issue in the future.

The Health Care Reform Act of 1992, P.L. 1992 c.160, establishes a cap on hospital revenue for 1993. The act provides explicit instructions for the determination of the cap which is to be approved by the Hospital Rate Setting Commission. On January 13, 1993 the Hospital Rate Setting Commission approved the revenue caps for each hospital based on a calculation prepared by the Department of Health.

The legislation also directs the Department of Health to provide for an audit of the hospital's revenue for 1993 and states that a hospital whose revenue exceeds the cap will be subject to a penalty. The current proposed rules at N.J.A.C. 8:31B-3.70 specifies the methodology which will be used by the Department of Health to determine the amount of revenue collected by each hospital during 1993.

A number of comments on this proposed rule raise issues relating to the determination of the cap. These comments are not relevant to a consideration of the proposed rule, which concerns a methodology for determining the hospital's 1993 revenue. Most of the issues raised in these comments were reviewed by the Hospital Rate Setting Commission prior to approval of the cap. In general, these commenters argue that the cap does not reflect 1993 inflation, case mix or volume and does not reflect capital costs for new projects which were not operational in 1992. The final cap does not include the total outstanding prior year revenue, which would have been included in a hospital's rates under Chapter 83.

The Health Care Reform Act of 1992 ("the Act") determines the calculation of the 1993 revenue cap. The Act (in section 3a) requires use of the 1992 Preliminary Cost Base (PCB), with new estimates for prior year revenue. The cap limit also required by the Act states that 1993 revenue may not exceed the hospital's 1992 P.C.B. This sets a further limit on the prior year revenue which the hospital may collect. This approach precludes use of 1993 inflation and recognition of 1993 case mix, volume and capital costs.

A review of the legislation and an overview of the comments/responses which were prepared by the Department of Health for the Hospital Rate Setting Commission follows:

N.J.A.C. 8:31B-2 Hospital Reporting of Uniform Bill-Patient Summaries (Inpatient)

COMMENTERS: Holy Name Hospital, The Valley Hospital, Overlook Hospital, Pascack Valley Hospital, Cathedral Healthcare System, The Mountainside Hospital, Health Research and Educational Trust, New Jersey Hospital Association, Kaden Arnone, Inc., SSM Healthcare Ministry Corporation, Healthcare Financial Management Association, Besler and Company, Inc., and St. Peter's Medical Center.

COMMENT: Several commenters stated that the requirement for UB-82 transmission to the data intermediary within 30 days of discharge is too restrictive. The bill may not be reflective of information upon which payment was based because payers and utilization review organizations make adjustments after this time period.

RESPONSE: The requirement that a bill be completed and finalized by hospitals within 30 days of patient discharge is not different from the current regulation. The phrase, "and submitted to the data intermediary," was added because some hospitals' quarterly submissions have been incomplete, leading to problems when data were used for research and analysis. The proposed rules do not change the subsequent submission timelines from the data intermediary to the Department of Health, which allows for a 90 day period following each quarter. If bills need to be changed after their initial submission from the hospital to the intermediary, there are 90 days after each quarter before submission to the Department of Health during which they can be changed. Because of the 90 day time lag, the earliest a final submission can occur is June 30th following the submission year. Additionally, any bill submitted during the year can be adjusted before the data base is finally closed. The June 30th timeframe will provide ample time for any necessary corrections.

COMMENT: Commenters also objected to language setting a September 1, 1993 deadline for confirming edits to be performed by the data intermediary prior to data submission to the Department of Health. They are concerned that January through August, 1993 data may be edited in an inconsistent or unfair manner if edits are not confirmed until September. Noting that the first quarter 1993 submission to the Department of Health is June 30, 1993, some commenters are requesting that this be extended or the edits be confirmed before June 30, 1993.

RESPONSE: Regarding the September 1, 1993 deadline for updating the memorandum of understanding between the data intermediary and the Department of Health, it is not the intention of the Department to institute retrospective edits that hospitals are not already aware of. Instead, the Department intends to synchronize edits performed by the Department with the data intermediary, which should reduce the number of fatal errors returned by the Department to the intermediary. This is to be documented in a current memorandum of understanding between the Department of Health and the data intermediary.

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COMMENT: Other commenters objected to the $10.00 per record penalty for records not submitted as being too severe, while some requested clarification of the penalty calculation, or objected to the use of the Medicare cost report as the basis of the calculation. Still others are requesting an explanation of what the UB-82 data will be used for, in the absence of ratesetting.

RESPONSE: As noted in the proposal, the $10.00 per record penalty will be calculated by comparing inpatient and same day surgery discharge UB-82 records submitted by hospital with discharge information for the same categories reported on the hospital cost reporting forms required elsewhere in N.J.A.C. 8:31B. The Medicare cost report will be used as another source of information, if necessary. Differences in reporting definitions for Medicare and New Jersey will be accounted for, if Medicare data are used. Finally, the proposal allows for a five percent variance between the cost report and actual UB-82 records received. The penalty will not apply if hospitals continue to consistently report their UB-82 cases at current levels, but is necessary because there is no longer the incentive of having data in place for ratesetting and reconciliation. Patient level UB-82 data continues to be necessary for policy and planning purposes. In order to clarify what UB-82 data is to be reported, N.J.A.C. 8:31B-2.2(a), which was originally proposed for deletion, has been added on adoption, as the only text of the rule. Subsections (b) through (e) are not appropriate at this time and have not been retained.

COMMENT: Finally, several comments were received opposing the reduction in cost of UB-82 data collection paid by hospitals to the intermediary from ($1.45 informally agreed to without regulation) to $1.26 (specified in the proposal) per discharge. Under Chapter 83, the $0.19 difference was paid by hospitals through the intermediary to the Health Research and Educational Trust (HRET). (Through this arrangement, HRET automatically received a tape copy of the UB-82 file when it was provided to the Department of Health by the data intermediary 90 days following each calendar quarter. HRET sponsored a series of periodic reports for the hospitals and the Department of Health showing control totals and record counts for cases submitted to the Department of Health with various breakdowns, such as bill type and charges by revenue code. The actual production of these reports was completed by the data intermediary.) Commenters asked that HRET's role be preserved by funding the trust through the intermediary, and noted that HRET's review substantially improved the accuracy of the data.

RESPONSE: The language included in N.J.A.C. 8:31B-2.5(f)3 has been interpreted by some commenters as authorizing the establishment of a separate "data reporter." In the past, HRET did act as a data reporter, but there has never been a separately authorized data reporter function in the rules: indeed, other commenters argue that the regulatory basis for a reporter should be strengthened. With deregulation of hospital rates, the Department thinks it is less critical to mandate funding of the reporter function. The Department notes that with 1.4 million annual inpatient and same day surgery records, eliminating mandated funding of this function creates a cost reduction for health care consumers of $266,000 Statewide. While some commenters noted HRET's historical role in the analysis of UB-82 data as being critical to its high level of accuracy, the Department receives useful input from the many requesters who pay the Department for, and receive, tape copies of the UB-82 file. The Department does not believe the additional benefit of HRET's input justifies the regulatory imposition of the additional cost. Hospitals can continue to contract with processors to provide reports based on their own data and Blue Cross can take whatever steps it deems necessary to assure accuracy of the data under its contract responsibilities as the intermediary.

Furthermore, the Department is required, in accordance with N.J.A.C. 8:31B-2.1(b)3, to maintain patient and physician confidentiality when making the UB-82 available as public information. In 1993, patient names will be collected for the first time. Increased vigilance is necessary to ensure patient and physician confidentiality and the Department believes it preferable to minimize the number of entities sanctioned by rules to access this data.

N.J.A.C. 8:31B-3.70 Revenue cap

COMMENTER: Community Medical Center

COMMENT: New revenue earned as a result of potential changes to Medicare reimbursement rates effective October 1, 1993, should be excluded from the calculation of collected revenue or added to the cap.

RESPONSE: Chapter 160 requires that the cap be applied to the total revenue a hospital collected in 1993 from all payers. There is no statutory authority to exclude revenue as suggested by the commenter. Nor, as noted elsewhere, can the revenue cap be modified, given the statutory requirements for calculation of the cap.

COMMENTER: Kimball Medical Center.

COMMENT: The requirement that separate allowances by payer be displayed is unreasonable; our computer system does not track this level of detail.

RESPONSE: Information on revenue by payer is critical to the evaluation of hospital financial stability and the evolving market for health care; the Department assumes that this information is equally critical to hospital managers. The five percent threshold was chosen because it should eliminate the need to keep track of payers with very small market shares. P.L. 1991, c.83 actuals, for example, suggest that only about five payers Statewide account for more than five percent of revenue. The reasonableness of this requirement is further supported by the fact that this was the sole unfavorable comment received.

COMMENTER: Kimball Medical Center.

COMMENT: The requirement for an auditor's letter is more costly than suggested by the Department in the economic analysis of the proposal, because Chapter 83 cashflow adjustments which required these letters were only accepted annually. The commenter believes that this proposal would require quarterly letters. The commenter recommends that an auditor's report only be required at year end.

RESPONSE: The Department would like to restate that the proposal's requirement for an auditors letter only applies at year end, pursuant to the first sentence of N.J.A.C. 8:31B-3.70(d).

COMMENTERS: Besler & Company, Hackettstown Community Hospital, Healthcare Financial Management Association, Helene Fuld Medical Center, Holy Name Hospital, Kaden Arnone, New Jersey Hospital Association, Overlook Hospital, Pascack Valley Hospital, and St. Barnabas Medical Center.

COMMENT: The revenue cap should be applied to revenue collected on a Statewide basis. Penalties should be applied only if Statewide collected revenue exceeded the cap by more than one percent. These commenters note that such an approach would preserve legislative intent that revenue not exceed the caps.

RESPONSE: Chapter 160, at section 3a, requires the Hospital Rate Setting Commission to establish a revenue cap for each hospital, and further requires that a hospital whose revenues exceeded its revenue cap during 1993 shall be liable to a civil penalty. No authority exists to calculate caps or collected revenue, on a Statewide basis.

COMMENTERS: Besler & Company, Hackettstown Community Hospital, Healthcare Financial Management Association, Kaden Arnone, and Overlook Hospital.

COMMENT: The commenters noted that FASB 106 requires that post-retirement health benefits be recorded as an expense, beginning with the 1993 financial statements, and that hospital charges must be increased to recover this additional expense. Since such amounts were not incorporated in the revenue cap calculations, commenters requested that hospitals be permitted to deduct FASB-related charges from net patient service revenue for proper comparability in cap monitoring and assessment.

RESPONSE: Under Chapter 160, there is no statutory authority to modify the cap for the expenditures associated with subsequent legal requirements. The legislation limits each hospital's 1993 revenue cap calculation to its 1992 preliminary cost base, without exception.

COMMENTERS: Besler & Company, Cathedral Healthcare System, Inc., Hackettstown Community Hospital, and Mountainside Hospital.

COMMENT: The rules need to be more specific about the methodology for audit. For example, comparisons of allowances and revenues to prior years would not be valid because of deregulation, changes in payment methods and the growth of HMO contracting. Hospitals need time to adjust their reporting mechanisms to track allowances.

RESPONSE: The Department agrees that these factors could have a bearing on the amount of allowances. The Department intends to audit the accuracy of the amount of revenues and payer allowances taken, and anticipate differences under deregulation. As noted elsewhere, the requirement for a 1993 revenue cap means that the Department cannot delay implementation of this requirement. Where the timing of this proposal means that hospitals will be unable to provide specific information required for the final calculation, the Department will be happy to propose an alternative; it cannot be determined from the comment what required information is not captured by current reporting mechanisms. The Department would note that standard hospital financial reporting rules require accounting for allowances.

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COMMENTERS: Atlantic City Medical Center, Besler & Company, Cathedral Healthcare System, Inc., Cooper Medical Center, Hackensack Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, Helene Fuld Medical Center, Holy Name Hospital, Kaden Arnone, Kennedy Memorial Hospital, Overlook Hospital, New Jersey Hospital Association, University Health Systems, and University Hospital.

COMMENT: There should be an appeals process concerning determination of hospital revenue for hospitals to present potential revenue calculation differences. Several commenters believe that such an appeals process would make imposition of the revenue caps less arbitrary or otherwise objectionable.

RESPONSE: Chapter 160 does not provide for an administrative appeals process for calculating compliance with the cap. Moreover, once the methodology is approved by virtue of these rules, application of the rules is a mechanical process. An administrative appeal process is, however, available for those hospitals assessed a penalty, and language referencing that process has been added on adoption to N.J.A.C. 8:31B-3.70(f).

COMMENTERS: Besler & Company, Hackettstown Community Hospital, Health Care Financing Authority, Holy Name Hospital, Kaden Arnone, Mountainside Hospital, Overlook Hospital, New Jersey Hospital Association, and St. Barnabas Medical Center.

COMMENT: These commenters requested more detail on how the Department would use the data it collects in monitoring cap compliance and whether adjustments would be recommended. Commenters noted that volume and case mix can exhibit seasonal fluctuation, and asked how these would be taken into account; one commenter asked that hospitals be given the flexibility to calculate a different quarterly cap to account for these factors. Several commenters asked to whom monitoring data would be submitted. Several commenters stressed the importance of standardized forms for cap monitoring and requested that the May 31 deadline for submitting the first quarter's data be delayed, since these forms have not been available and the comment period for these rules closed on May 19. Some commenters asked that the one percent threshold by which collected revenue can exceed the cap be increased, since the monitoring process has been delayed. One commenter noted that a method for calculating the cap and revenue will not be known before midyear, and that large swings in revenue could result, making it difficult for hospitals to plan for compliance with the cap. Another commenter noted that the distribution of special subsidy funds was unknown until mid-February, and requested that the first half of 1993 revenue be excluded from the penalty assessment process.

RESPONSE: The monitoring process will be used to indicate whether a hospital is in potential danger of exceeding the revenue cap and incurring a penalty well in advance of the final calculations in 1994. The Department recognizes that this information is preliminary and subject to seasonal variations and the lack of certitude regarding revenue. This information will also be helpful to the Department in carrying out its other regulatory functions (such as monitoring the ability of hospitals to deliver services, the financial analysis of applications for certificates of need, or providing information on hospital costs and financial status to the Essential Health Services Commission, payers and consumers). The Department has also structured the cap monitoring process to allow hospitals to preview the results of the cap calculation by providing a bridge between traditional accounting categories and the cap calculation, as structured in the proposal.

The Department will not be taking action on any penalties until after the audit and final calculation of collected revenue are complete. Should its monitoring process reveal a potential violation of the cap, the Department will discuss its results with individual hospitals. The Department agrees that seasonal fluctuations could affect the quarterly monitoring process and will discuss these with hospitals as necessary. The Department believes that such an approach is more suitable than allowing each hospital to decide which portion of the cap it is comparing quarterly revenue to, which would be cumbersome and make it harder to measure compliance with the cap.

The Department has now issued standardized forms for calculating collected revenue, and comparing it to the cap, and has extended the deadline for submitting these forms to the Health Care Financing Program in the Department of Health to June 18, 1993. The Department is not proposing a change to the one percent threshold, which was intended to recognize hospitals' inability to precisely anticipate appropriate charge levels during the year. The Department does not think it is necessary to increase the threshold simply because monitoring has not yet begun. Since monitoring results are not due until 60 days after the end of the quarter, first quarter monitoring could in no case have been completed before this rule was finalized. The legislation concerning revenue caps was passed in late 1992; the revenue caps were approved by the Hospital Rate Setting Commission in January 1993. The subject of this proposal is the calculation of approved revenue for comparison to these caps. The Department made this proposal early in 1993 and is not substantially revising it; it is being finalized now because of the comment period required by State law. Chapter 160 requires that revenue caps apply to amounts a hospital may collect in 1993 and does not provide for the exclusion of part of a year.

COMMENTERS: Besler & Company, Hackettstown Community Hospital, Mountainside Hospital, and Cathedral Healthcare System, Inc.

COMMENT: These commenters asked for more information about how penalties will be paid, how much is to be paid, and to whom.

RESPONSE: Penalties will be assessed in a notice issued by the Department. Chapter 160 affords hospitals the opportunity for an administrative hearing and states that the recovered penalties will be deposited in the Health Care Subsidy Fund. The amount to be paid will vary, and will be assessed according to the equation delineated in N.J.A.C. 8:31B-3.70(f).

COMMENTERS: Besler & Company, Cathedral Healthcare System, Inc., Hackettstown Community Hospital, and Mountainside Hospital.

COMMENT: These commenters asked for more specific definition of the allowances which can be subtracted from gross revenue. Commenters believed that additional deductions should be allowed for prompt pay discounts, private room differentials, and other administrative allowances (administrative adjustments).

RESPONSE: The Department agrees that very specific definitions of allowances which can be deducted from gross revenue should be provided, so that there can be no disagreements over what elements of gross revenues charged to patients are considered part of collected revenue. For this reason, the Department provided a regulatory or standard accounting definition for every allowable item. If no such item is specified in the rule, hospitals can assume that the Department will treat these charges as collected.

The Department agrees it is appropriate to exclude private room differentials from collected revenue. Increased charges for private room differentials are excluded from revenue under N.J.A.C. 8:31B-4.65, which is included in the proposal at N.J.A.C. 8:31B-3.70(c)(2).

The revenue cap was set to recognize that prompt payment discounts not taken were a financial element under Chapter 83 and were part of the preliminary cost base; that is, rates were increased to assume that higher rates could be charged to payers if payment were not made promptly. The revenue cap therefore allows hospitals to collect a higher rate with an allowance for working capital. Should a hospital and a payer agree to a lower rate due to prompt payment, the hospital will not collect that revenue. The Department agrees this should be in the allowances and have revised its proposal accordingly at N.J.A.C. 8:31B-3.70(b) and (c).

The Department agrees with the request that "other administrative allowances" be taken into account and have modified our proposal accordingly. These items are defined in N.J.A.C. 8:31B-4.15(a)(5).

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

8:31B-2.1 Purpose

(a) The purpose of this subchapter is to provide the basis for a single patient data reporting system to satisfy the health planning requirements of the Health Care Reform Act of 1992 (P.L. 1992, c.160). The subchapter incorporates the National Uniform Bill (UB-82 HCFA-1450) as the common hospital billing format for all payers. The data elements and design of the form have been determined by the National Uniform Billing Committee (NUBC). The NUBC includes representatives of the Federal Government, major payers, and hospital associations.

(b) This subchapter will continue to allow hospitals to:

1. Satisfy Department of Health reporting requirements for patient level clinical and financial information;

2. Allow for common and consistent reporting of revenues for services related to patient care; and

3. (No change.)

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8:31B-2.2 *[(Reserved)]* ***Implementation***

Beginning January 1, 1981 N.J.A.C. 8:31B-2.1, the rule on Hospital Reporting of Uniform Bill-Patient Summaries (Inpatient), has been used as a common billing and reporting mechanism for each inpatient discharged and ambulatory same day surgery outpatient treated in each hospital covered under Chapter 83, P.L. 1978.

8:31B-2.3 Billing form

(a) The UB-82 is a multi-part form set printed in green ink. Form sets will be composed of three payer copies and one or more hospital copies. If more than three payers are involved, a second bill will be required. Detailed specifications are included with the UB-82 completion guidelines.

(b) (No change.)

8:31B-2.4 Guidelines for completion of the patient billing and abstract form

(a) Procedural guidelines for completing the patient billing and abstract form follow:

1. (No change.)

2. Specific instructions for Blue Cross, Medicaid, and other payers will be provided by those payers.

3. (No change.)

(b) Billing timelines requirements are as follows:

1. A UB-82 must be completed, finalized and submitted to the Data Intermediary for each patient within 30 days of discharge of the patient.

2. Where claims administration and cash flow considerations would dictate a more current billing than the 30 day requirement, a preliminary version of the UB-82 containing only those items required for the particular payer need be utilized at the time of billing. In interim billing cases, it is required that the completed patient billing and abstract information be submitted to the appropriate Data Intermediary in compliance with the Data Intermediary time limits and the Department of Health Data Requirements (see N.J.A.C. 8:31B-2.5(g). Data items reported to the data intermediary for transmission to the Department of Health, shall not differ from data upon which payment was based.

8:31B-2.5 Health data submissions to the Department of Health

(a) A data intermediary shall be selected as follows:

1. A data intermediary is an approved data processor responsible for collecting, editing, generating selected reports, and submitting the UB-82 data to the Department of Health.

2. A single data intermediary shall be chosen by each hospital and shall be responsible for all patients regardless of payer class. In the event that it becomes necessary to approve additional data processors, the Department will promulgate an approved list of data processors.

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

(d) To assess the accuracy and reliability of the data provided to the Department of Health, the Department of Health shall periodically audit selected records in the hospital with no attempt to tie together patient names and patient identification numbers at the Department of Health.

(e) Data shall be edited as follows:

1. The data received by the intermediary from the hospital must be edited prior to submission to the Department of Health.

i. The edits to be performed shall be agreed upon and confirmed by amendments to the current memorandum of understanding between the Department of Health and the Data Intermediaries and approved by September 1, 1993.

2.-3. (No change.)

(f) Reports shall be produced as follows:

1.-4. (No change.)

5. The ultimate responsibility for the completeness and accuracy of UB-82 data submitted to the Department of Health rests with the hospital.

6. Upon request of a payer, the final UB-82 information shall be provided to the payer, for its own cases, by the UB-82 Intermediary(ies).

(g) Data shall be submitted to the Department of Health as follows:

1. (No change.)

2. Records not received by the Department of Health (including corrections of fatal errors), within the time frames specified, shall be subject to a penalty of $10.00 per record. For purposes of calculating the penalty, the total UB-82 records submitted will be compared to the total admissions and/or discharges reported on the Medicare cost report and/or Hospital Cost Forms submitted to the New Jersey Department of Health. A five percent variance will be allowed. The Department shall provide 30 days notice of its intent to close the data base, and no additional cases shall be added after that time.

3. (No change.)

(h) (No change.)

8:31B-3.70 Revenue Cap

(a) The Hospital Rate Setting Commission will establish the maximum amount a hospital may collect in revenues in 1993 from all payers.

(b) Collected revenue will be calculated as follows:

Gross Patient Service Revenues	_____
Less Excluded Services	_____
Less Current Year Payer Allowances	_____
Less Medicare Allowances	_____
Less Uncompensated Care	_____
***Less Prompt Payment Discounts**	_____*
Less Personnel Health Allowance	_____
Less Medical Denials Allowances	_____
Less Nursing Home Placement Allowances	_____
Less Courtesy Adjustments	_____
***Less Other Administrative Adjustments**	_____*
Collected Revenue	_____

(c) For the purposes of (b) above:

1. Gross patient service revenues shall include charges for all patients receiving routine ancillary and ambulatory services during 1993, including those receiving charity care.

2. Excluded services as defined in N.J.A.C. 8:31B-4.61 to 4.67 were not included in the 1993 revenue cap and shall not be included in collected revenue. Separate detail shall be provided on the following services: skilled nursing facility, mobile intensive care unit, outpatient dialysis, excluded ambulatory services.

3. Current year payer allowances reflecting the difference between charges and paid amounts shall be displayed separately for each payer comprising more than five percent of gross revenue.

4. Uncompensated care is defined in N.J.A.C. 8:31B-4.38, and shall be reported without an offset for Medicaid disproportionate share payments. Bad debt shall be reported net of recoveries from bad debt and SOIL (Setoff of individual liability, pursuant to N.J.A.C. 8:31B-4.40 and N.J.A.C. 18:35-2).

5. Allowances for personnel health, medical denials*,* *[and]* nursing home placement***, prompt payment discounts and other administrative adjustments*** shall be calculated consistent with N.J.A.C. 8:31B-4.15.

6. Allowances exclude prior year over and undercollections. All third party retroactive payments or settlements shall also be excluded.

7. Funds related to the charity care, other uncompensated care, hospital relief fund and mental health subsidies shall not be included in these amounts. Subsidy funds shall not be reflected in the cap amounts.

(d) Hospitals shall submit the information for the year ended December 31, 1993 outlined in (b) above by May 31, 1994, in a format to be supplied by the Department, accompanied by an auditor's agreed upon procedures report. The auditor's report shall comment on classification of allowances and revenues based on the above definitions. The auditor shall trace and agree amounts to the general ledger. Hospitals shall also submit the information outlined in (b) above, in a format to be supplied by the Department, 60 days after the end of each of the first three quarters during 1993, for the purposes of monitoring. For the purposes of calculating compliance with the revenue cap, the Department will calculate a reasonable estimate of amounts needed to complete the calculation

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under (b) above if the required data are not submitted by this date or if data is submitted in other than the required format.

(e) The Department will conduct an audit of the items specified in subsection (b) for reasonableness, taking into account the hospital's experience in earlier years, billing information and other applicable data.

(f) If a hospital's collected revenue, as defined in (b) above, exceeds the 1993 revenue cap as approved by the Hospital Rate Setting Commission by more than one percent, the Department will calculate a penalty equal to the total excess. The percentage for each hospital is calculated by dividing the excess by the cap. ***A hospital which is assessed a penalty shall be afforded the opportunity to contest the penalty at a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 14:7-1 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.***

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Children's Partial Care Standards

Adopted Amendments: N.J.A.C. 10:37-5.46, 5.47, 5.48, 5.49 and 5.50

Adopted New Rules: N.J.A.C. 10:37-12

Proposed: February 16, 1993 at 25 N.J.R. 669(a).
Adopted: June 17, 1993 by William Waldman, Commissioner, Department of Human Services.
Filed: June 18, 1993 as R.1993 d.355, **without change**.
Authority: N.J.S.A. 30:9A-10.
Effective Date: July 19, 1993.
Expiration Date: November 2, 1995.

Summary of Public Comments and Agency Responses:

The Department received public comment from the New Jersey Psychological Association (NJPA).

COMMENT: NJPA commented that the proposal emphasizes psychiatric intervention/evaluation whereas psychological intervention/evaluation should also be emphasized.

RESPONSE: The proposal requires a comprehensive range of services to address the individual needs of youth at N.J.A.C. 10:37-12.4(a) and a full assessment prior to the development of the youth's treatment plan at N.J.A.C. 10:37-12.8(a). Although it would be both appropriate and desirable for agencies to include psychological services as part of the services rendered and psychological assessment as part of the assessment provided, psychiatric intervention/evaluation is denoted by title due to its unique ability to prescribe and monitor utilization of medications. Its inclusion should not be interpreted as non-recognition of either the appropriateness or value of psychological intervention/evaluation, or that of other human services professions.

COMMENT: NJPA recommended that individual and group therapy services be provided by licensed professionals, either psychologists or social workers rather than individuals with bachelor's degrees and one year of experience as the proposal allows.

RESPONSE: The Department agrees with the intent of this comment to assure professionally competent staff and encourages providers to use licensed professionals for appropriate services wherever possible. At the same time, because of the recognition that not all human services professions are subject to licensing procedures and that not all services may require specifically licensed practitioners, as well as the realities of the marketplace concerning licensed professionals and limited available financial resources, the Department does not believe it can or should require that such services be provided by licensed professionals in all cases for these programs.

COMMENT: NJPA commented that behavior management programs are needed for this population and should be supervised by licensed psychologists.

RESPONSE: The proposal requires that individual needs be addressed but does not attempt to prescribe specific treatment modalities to be used to meet them. While agencies may employ behavior modification programs, the selection of an appropriate intervention strategy is left to the clinical judgement of program staff. It is also required by the Department that the Program Director assure the development of appropriate treatment plans and that supervision of staff be adequate throughout their implementation.

COMMENT: NJPA recommended the hiring of licensed psychologists on either a full-time or consulting basis rather than the hiring of unlicensed psychologists by provider agencies.

RESPONSE: The Department is in agreement with the intent of this comment and notes that agencies may follow these recommendations as the needs of the youth dictate and their financial resources permit.

Full text of the adoption follows:

10:37-5.46 Scope and Purpose

(a) The rules in this Article govern the operation of the Division of Mental Health and Hospitals funded adult partial care programs. The rules governing the operation of Division-funded children's partial care programs are codified at N.J.A.C. 10:37-12.

Recodify (a)-(d) as (b)-(e) (No change in text.)

10:37-5.47 Funding requirements

(a) PC programs shall be available daily for five days a week, with additional planned activities each week, during evening and/or weekend hours, as needed. Individual clients, need not attend every day but as needed.

(b) PC activities shall be fully integrated into one comprehensive continuum of services. Contract programs shall not duplicate PC program sponsored through a Grant-in-Aid agency in the same Service Area.

(c) The Division may grant funding approval for more than one PC program sponsored by the same agency, in order to demonstrate a variety of service models and/or to develop a continuum with planned movement among PC programs based on client need. Such a request must be justified in writing to the County Mental Health Board and the Division and must be approved by the Division prior to implementation. Such PC programs shall not segregate clients on the basis of diagnosis and/or history of psychiatric hospitalization.

10:37-5.48 Population priorities

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

10:37-5.49 Services

(a) Services to be provided: These services shall be provided or arranged for, to meet the individual needs of participating clients (services (a)1iii, and viii through xiv may be provided directly or arranged by PC staff, through other Program Elements or agencies, to avoid duplication):

1. Assessment and evaluation;
2. Service procurement;
3. Therapy;
4. Information and referral;
5. Counseling;
6. Daily living education;
7. Community organization;
8. Employment/employment readiness;
9. Housing/placement;
10. Legal;
11. Recreation;
12. Transportation;
13. Health related.

(b) Service approaches:

1.-5. (No change.)

Recodify existing 7 and 8 as 6 and 7. (No change in text.)

8. The Individual Service Plan shall be reviewed and updated minimally seven days after enrollment, 90 days after enrollment, and every six months thereafter, to insure program/service appropriateness.

Recodify existing 10-12 as 9-11. (No change in text.)

10:37-5.50 Staff

(a) There shall be a PC Director and other staff deemed necessary to implement a PC program which meets the requirements of Article VI of this subchapter.

(b) The Director shall be a qualified professional from the specialties of psychiatry, psychology, social work, psychiatric nursing,

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vocational rehabilitation, or a related field, with training and/or experience in direct service provision and administration.

(c) "Other Staff" shall minimally include a staff person trained and/or experienced in the area of Employment-Related Services.

(d) A qualified psychiatrist shall be available to the PC program, on a regularly scheduled basis, for consultation.

(e) A qualified mental health professional shall be involved in the development and periodic review of each client's Individual Service Plan, at least every three months.

(f) Paraprofessionals and volunteers shall be utilized to the extent possible, to assist in a variety of ways, such as, but not limited to: activities programming, community-orientation, daily living education, advocacy, service procurement, and/or companionship.

SUBCHAPTER 12. CHILDREN'S PARTIAL CARE PROGRAMS

10:37-12.1 Purpose, scope and goals

(a) Children's partial care programs provide seriously emotionally disturbed youth with a highly structured intensive day treatment program. Such programs are typically located in, but need not necessarily be limited to, a community-based mental health setting or hospital-based setting.

(b) Program goals include:

1. Prevention of psychiatric hospitalization of youth at risk of psychiatric hospitalization;

2. Prevention of re-hospitalization of youth who have been psychiatrically hospitalized; and

3. Provision of a transition for psychiatrically hospitalized youth from the hospital back into the community.

(c) Agencies operating children's partial care programs shall strive to maximize each youth's potential for learning, growth, and emotional stability within the family or natural support system. Agencies operating children's partial care programs shall respect the rights and dignity of all youth. Partial care programs shall:

1. Respect the rights and dignity of youth and family members and when appropriate preserve the family unit;

2. Foster community living by teaching skills and improving functioning;

3. Help each youth to realize their own potential for learning;

4. Foster healthy interdependence;

5. Help clients develop and use social support systems;

6. Help clients and their family members or legal guardians learn to manage the client's illness in order to prevent relapse, re-hospitalization, or placement in a restrictive environment;

7. Empower clients and families to actively participate in treatment and programming and to determine personal and program goals;

8. Affirm clients strengths and abilities; and

9. Encourage and support clients' and families' efforts to help each other.

10:37-12.2 Definitions

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

"Children's crisis intervention services" or "CCIS" means an acute care inpatient unit located in a hospital or free-standing facility established to serve children and adolescents from the ages of five through 17 who have:

1. Received an initial screening by a designated mental health emergency or screening service;

2. A primary psychiatric diagnosis; and

3. A level of personal and social functioning impairment to the extent that inpatient psychiatric crisis intervention and treatment services are necessary.

"Children's partial care program" means a day treatment program offering structured activities including activities for daily living, recreation, and socialization activities and other mental health services based upon the needs of the youth.

"Comprehensive treatment plan" means the formulation of service and treatment goals, objectives and interventions based on an assessment which shall include psychological, medical, developmental, recreational and vocational components.

"Counseling" means the use of therapeutic methodogies which enable families to resolve problems or temporary stress of situations which they have encountered.

"Daily living skills" means the activities which enable a youth to perform functions for every day living, such as basic housekeeping, grooming, dressing, maintaining schedules, social and recreational activities.

"Department" means the New Jersey Department of Human Services.

"Division" means Division of Mental Health and Hospitals within the New Jersey Department of Human Services.

"DYFS" means Division of Youth and Family Services within the New Jersey Department of Human Services.

"Group counseling" means the use of group processes and supports to develop in individuals the capacity to overcome specific personal problems or problem conditions.

"Seriously emotionally disturbed" means a child or adolescent exhibiting one or more of the following characteristics: behavioral, emotional, or social impairment that disrupts the child's or adolescent's academic or developmental progress and may also impact upon family or interpersonal relationship. This disturbance shall have also impaired functioning for at least one year or the youth has an impairment of short duration and high severity and is under 18 years of age.

"Youth" means children under 18 years of age.

10:37-12.3 Population to be served

(a) Agencies operating children's partial care programs shall serve youth with serious emotional disturbances. First priority for admission shall be youth who are diagnosed as seriously emotionally disturbed and meet one or both of the following criteria:

1. Currently residing in or having previously resided in Arthur Brisbane Child Treatment Center, a Children's Crisis Intervention Services (CCIS) unit, a psychiatric community residence for children program, a private hospital, or other out-of-home placement; and/or

2. By reason of serious emotional disturbances, presently at risk of extended out-of-home placement.

(b) Youth diagnosed as seriously emotionally disturbed who do not meet the criteria in (a)1 or 2 above may be admitted provided that all youth referred who meet the criteria are given first priority for admission. However, the agency must have written procedures which prioritize admission to those youth who meet the criteria in (a)1 or 2 above.

10:37-12.4 Program services

(a) Agencies operating children's partial care programs shall provide a comprehensive range of services to address the individual needs of the youth. These programs shall be available daily five days per week, with additional planned activities during evenings or weekend hours or both, as needed.

1. These services shall be available for all youth and provided to the extent required by individual service plan. The capacity to provide or arrange for partial care services shall be documented, and evidence of the actual provision of such services shall be documented in the clinical record. Services shall include, but need not be limited to, the following:

i. Individual and group counseling and support;

ii. Therapeutic activities to address daily living (ADL) skills, recreation and socialization needs;

iii. Medication management;

iv. Family support services such as: family therapy, family psychoeducation, family supportive counseling, or parenting skills development;

v. Psychiatric assessment;

vi. Case coordination;

vii. Referral, advocacy, and service linkages;

viii. Liaison with the educational system; and

ix. Therapeutic milieu activities such as community meetings, behavior management programs, and related programming.

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2. For services arranged through non-partial care providers, the partial care program shall provide referral, case coordination, and advocacy for all such services not provided. These service needs and their appropriate provision shall be documented in the clinical record.

10:37-12.5 Age appropriate services

(a) The agency shall implement written policies and procedures that address age grouping of available services for nursery (ages three to five), latency (ages five to 10), pre-adolescent (ages 10 to 12), adolescent (ages 12 to 17), and aging-out youth (above age 17). In those cases where it is determined that a youth receives services not with their chronological age group, written documentation shall be maintained in their clinical record as to the justification therefor.

(b) The agency shall develop and implement written policies and procedures for transitioning youth from one age grouping to another age grouping, as well as, transitioning youth to adult services.

(c) The agency shall be permitted to provide partial care services to youth who attain age 18 provided that such services are indicated on the treatment plan, and adequately justified as to need for continued services.

10:37-12.6 Admission

(a) Agencies operating children's partial care programs shall develop written admission procedures. Procedures shall include, but not be limited to, the following:

1. Admission criteria (both inclusionary and exclusionary) that reflects the characteristics of the population to be served;

2. Referral procedures, which identify any service area or geographic restrictions, contact procedures, scheduling of intake interviews, and procedures for obtaining required information;

3. Procedures for obtaining an authorized consent for treatment; and

4. Procedures for notifying applicants, families and referral sources of admissions decisions, rationale for such decision, and any information related to service initiation. Such notification shall be made within five days of the intake interview.

(b) The agency shall develop procedures for youth who are appropriate for the program but cannot be served immediately, including provisions for referral to interim services as needed.

10:37-12.7 Intake

(a) Agencies operating children's partial care programs shall develop policies and procedures governing the recording of intake information. Intake information shall include, but not be limited to, the following:

1. Client's identifying information (for example, address, telephone number, emergency contact);

2. Presenting problem, reason for referral as perceived by client, parents, guardian and significant others;

3. A brief case history of illness including services received at the agency and elsewhere;

4. A psychiatric diagnosis (if applicable);

5. Indicators of characteristics that need to be of concern to service providers in the provision of treatment to the youth;

6. Medication information;

7. History of drug or alcohol abuse;

8. Current mental health service providers;

9. Other service providers;

10. Family information;

11. Social supports;

12. Medical history;

13. Relevant educational information; and

14. Legal information relevant to treatment.

10:37-12.8 Service plan

(a) Agencies operating children's partial care programs shall develop service plans based on the clinical needs of the youth.

1. Based on the information gathered through the intake process, a member of the professional staff shall complete an assessment of the clinical needs of the child. This assessment shall include: treatment recommendations, immediate needs, preliminary goals or objectives and initial interventions. This assessment shall serve as the initial service plan until the comprehensive treatment plan is developed. This assessment shall be entered into the clinical record within 10 days of the child's admission.

2. Prior to the development of the comprehensive treatment plan, a full assessment shall be conducted, documented in the clinical record, and conclude with findings and recommendations. This assessment shall include, but not be limited to, the following factors relating to each individual youth:

i. Motivation (for example, willingness to participate in the program);

ii. Social and recreational (for example, ability to make friendships, communication skills, hobbies);

iii. Emotional and psychological (for example, mental status, history of abuse, understanding of illness, coping mechanism);

iv. Medical and health (for example, allergic reactions, medication information);

v. Educational and vocational (for example, task concentration, motivation for learning);

vi. Daily living activities (for example, transportation, budgeting, self care, hygiene);

vii. Environmental supports (for example, housing, income);

viii. Social supports (for example, family, friends);

ix. Substance abuse and usage; and

x. Strengths and special skills.

3. A comprehensive treatment plan based on the comprehensive assessments shall be developed no later than 30 days after entrance to the program. The plan shall be reviewed by appropriate treatment team members at subsequent 90-day intervals.

i. The plan shall address all recommendations included in the comprehensive assessment.

ii. The plan shall contain goals and measurable objectives set in reasonable time frames.

iii. The plan shall contain staff interventions and frequency of service activities.

iv. The plan shall reflect client and family participation as evidenced by signatures as appropriate.

v. All other providers providing services to the youth shall be invited to provide input into the treatment planning process.

vi. All team members participating in the plan development shall sign the plan.

10:37-12.9 Progress notes

(a) Progress notes shall be written in the youth's record at least weekly.

1. Each weekly progress note shall include:

i. A summary of services provided;

ii. The youth's general level of participation in the program for the week;

iii. The response to and outcome of service plan interventions; and

iv. Critical or significant events that have occurred during the week (for example, service coordination, crisis event).

2. During the course of treatment, the progress notes shall address all elements of the service plan and reflect the child's overall progress in the stated goals.

10:37-12.10 Termination, discharge, and referral

(a) Agencies operating children's partial care programs shall have procedures for termination, discharge, and referral which ensure that the youth's continuing service needs are met.

1. Discharge criteria shall be documented in the clinical record. These criteria shall specify functional levels to be achieved for successful discharge.

2. Discharge criteria shall be incorporated into the treatment planning process.

3. Prior to discharge, a discharge plan shall be completed that shall address the youth's continuing needs. It shall minimally include an assessment of further need and available resources to meet such needs, referrals and linkages being made where appropriate to meet identified need and any follow-up activities and intervention planned.

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4. The youth and family shall participate in the development of the discharge plan.

5. Agencies operating children's partial care programs shall have written policies and procedures that address termination. Such procedures shall assure that all termination decisions are reviewed for appropriateness. Such policies shall include, but not be limited to, possible reasons for termination, actions to be undertaken prior to a termination decisions and provisions for documentation of information relative to the termination decision.

6. The discharge summary shall include:

i. The presenting problem;

ii. The start date for services and termination date of services;

iii. The course of treatment;

iv. The reason for termination;

v. Discharge medication; and

vi. The discharge plan.

10:37-12.11 Staffing requirements

(a) Agencies operating children's partial care programs shall employ sufficient numbers of qualified staff to provide the required services.

1. Program staffing shall be based on the clinical needs of the population served. There shall be a written description of the staffing pattern and the roles and responsibilities of staff.

2. For 10 or less youth, at least two direct care staff must be present, except in those cases where there are five or less youth, one staff member may be a volunteer, student intern or non-direct care staff. For more than 10 youths, an additional direct care staff member must be present for each additional group of five youth.

3. There shall be a written schedule for all staff and volunteers providing direct services to youth. This schedule shall be posted and revised weekly or as needed.

4. Each program shall have an individual who meets the qualifications of a program director (see N.J.A.C. 10:37-12.12(b)).

5. The partial care program shall have sufficient availability of psychiatric services so that required psychiatric services are available for each youth. Each youth's treatment shall be under the direction of a psychiatrist as reflected by psychiatrist participation in the service plan.

6. The agency may utilize student interns, non-direct care staff and volunteers. Such individuals shall not substitute for direct care staff or supervisors.

10:37-12.12 Staffing responsibilities

(a) The responsibilities of the program director shall include, but are not limited to, the following:

1. Planning, identifying and developing children's partial care programs and goals;

2. Providing overall daily management of the children's partial care program;

3. Participating in all relevant county youth's services planning activities (for example, Child Assessment Resource Teams (CARTS) and the Children's Interagency Coordinating Council (CIACCS);

4. Participating in case conferences;

5. Ensuring that the children's partial care program is serving the target population;

6. Ensuring that appropriate treatment and discharge plans are developed;

7. Ensuring that client records are maintained;

8. Providing and ensuring adequate supervision of all staff employed by the children's partial care program;

9. Assuring adequate staffing levels are maintained;

10. Developing and implementing orientation and in-service training programs;

11. Preparing service and budgetary records and submit records to appropriate parties;

12. Establishing internal and external communication systems so that all staff are apprised of pertinent information;

13. Developing and implementing staff orientation, staff development and in-service programs;

14. Ensuring emergency and crisis capability;

15. Ensuring compliance with accepted standards of care;

16. Establishing and maintaining formal and informal affiliation with other needed service providers;

17. Performing related duties as needed and appropriate to the provision of partial care services; and

18. Ensuring that intake assessments are completed.

(b) The program director minimally shall have:

1. An earned master's degree in family therapy, psychology, counseling, social work or other related field from an accredited university; and

2. Three years' experience in the provision of youth's mental health services, at least one of which shall have been in a supervisory capacity.

(c) Agencies operating children's partial care programs shall have access to a psychiatrist whose duties include, but are not limited to, the following:

1. Evaluating, diagnosing, prescribing and, if necessary, dispensing medication to program clients;

2. Providing information and education on medication needs, usage, and side effects to clients and family;

3. Monitoring client's response to prescribed medication;

4. Providing consultation to program staff as appropriate;

5. Providing medical direction to case assessment, treatment plans and service provision;

6. Conducting psychiatric assessments and evaluations as needed;

7. Providing recordkeeping in an accurate and timely manner as required;

8. Maintaining a valid Medicare and Medicaid provider number; and

9. Performing related duties as needed and appropriate to the provision of partial care services.

(d) The psychiatrist minimally shall have:

1. A license to practice medicine in New Jersey;

2. Board eligibility in psychiatry; and

3. Two years' experience in working with youth.

(e) The responsibilities of the direct care professional worker shall include, but are not limited to, the following:

1. Providing the following direct care services:

i. Individual and group counseling and support;

ii. Activities to address daily living skills;

iii. Recreational and socialization activities; and

iv. Family services such as referral, advocacy and service linkages;

2. Participating in the development of treatment plans and comprehensive assessments;

3. Participating in the development of discharge plans and making needed referrals;

4. Participating in case conferences;

5. Assisting youth directly to address self-care needs;

6. Providing support to auxiliary staff, student interns and volunteers;

7. Assisting in the development of staff orientation programs;

8. Maintaining clinical documentation; and

9. Performing related studies as needed and appropriate to the provision of partial care services.

(f) The direct care professional worker minimally shall have:

1. An earned bachelor's degree in social work, psychology or related field from an accredited institution; and

2. One year's experience in the provision of children's mental health services.

(g) The responsibilities of the direct care paraprofessional worker shall include, but are not limited to, the following:

1. Being responsible for providing direct child care services;

2. Providing case information to the professional direct care worker;

3. Providing input on cases;

4. Recognizing client behavioral signs indicating potential emergency and taking immediate action by reporting to appropriate staff;

5. Assisting clients in preparing for group activities;

6. Assisting clients in preparing for social and recreational activities;

7. Assisting clients in activities that address daily living;

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8. Performing light household duties;
9. Providing transportation; and
10. Performing related duties as needed and appropriate to the provision of partial care services.

(h) The direct care paraprofessional worker minimally shall have:

1. An earned bachelor's degree from an accredited institution, or earned associate's degree and two years' experience in the provision of appropriate services to youth; or

2. A high school diploma and five years' experience in the provision of appropriate services to youth.

(i) Agencies operating children's partial care programs may use volunteers, student interns, and non-direct care staff to support the activities of regular paid staff members.

1. Agencies operating children's partial care programs shall ensure that volunteers, student interns, and non-direct care staff who have contact with youth and parents receive proper training and are supervised by paid staff members. Such training and supervision shall seek to educate and inform the volunteer, intern, non-direct care staff about any special needs or problems they might encounter while working with the youth.

2. The agency shall have written policies and procedures governing the activities of volunteers, student interns and non-direct care staff. These shall clearly articulate roles, responsibilities, and any activity restrictions.

3. Agencies operating children's partial care programs shall require that references be submitted by prospective volunteer, student intern, and non-direct care staff.

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

State Psychiatric Hospitals; Pre-Placement Program

Adopted New Rules: N.J.A.C. 10:38A

Proposed: December 7, 1992 at 24 N.J.R. 4326(a).

Adopted: June 17, 1993 by William Waldman, Commissioner, Department of Human Services.

Filed: June 18, 1993 as R.1993 d.356, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12.

Effective Date: July 19, 1993.

Expiration Date: July 19, 1998.

Summary of Public Comments and Agency Responses:

The Department received public comments from the Department of the Public Advocate (DPA), the Communication Workers of America (CWA), and the New Jersey Association of Health Care Facilities (NJAHCF). NJAHCF stated it was pleased the Division has decided to reinstitute the Pre-Placement Program; CWA took strong exception to the proposal in its current form and DPA supported the proposal overall. Their additional specific comments and the Department's responses are provided below.

COMMENT: CWA commented that the proposal did not set forth the quantity or quality of the mental health services to be provided to pre-placement program participants in the community and that previous deinstitutionalization policies had failed.

RESPONSE: The purpose of this proposal is to provide incentive to facilities, such as licensed boarding and residential health care facilities, to provide placement opportunities to eligible State hospital patients. The type of, and standards for, the community mental health services available to those individuals from community mental health agencies are addressed in N.J.A.C. 10:37. This proposal was not intended to introduce a new deinstitutionalization policy; it is intended only to financially facilitate the access to licensed residential settings for patients who have received the maximum available benefit from their hospitalizations.

COMMENTS: CWA and NJAHCF commented that the 14 day trial period established by the proposal was too brief and should be longer. DPA commented that the 14 day trial period should be reduced to 10 days.

RESPONSE: The Department has attempted to balance the concerns of facility staff and consumer advocates within current legal parameters by establishing a maximum trial period of 14 days. The comments received reflect that in attempting to strike this balance, the Department is unlikely to totally satisfy either of the competing or conflicting perspectives. Given the comments received, a trial period of 14 days appears to be a reasonable balance between these varying interests.

COMMENT: CWA commented that some individuals successfully placed through this program might later need additional community mental health services and that inability to receive such services could jeopardize their community placement while not necessitating involuntary hospitalization. Concern was expressed that these former patients not "fall through the cracks."

RESPONSE: The Department is aware of this possibility and notes that residents of such facilities who are at risk of hospitalization or loss of residence are eligible for appropriate community mental health services from Division funded agencies, including screening services, on a priority basis.

COMMENT: NJAHCF asked for clarification as to whether long term care facilities (nursing homes) might also be eligible to be a pre-placement site. DPA commented that eligible pre-placements sites should include any residence, living arrangement, facility or program deemed appropriate by an eligible patient's treatment team.

RESPONSE: The Department believes it is desirable to maximize placement opportunities with the program to the fullest extent funding permits. In many cases, but certainly not all cases, the Department receives reimbursement for the cost of placement which has been advanced to the residential facility. The Department determined the approximate amount of money currently available to fund this program and concluded that it was sufficient to ensure payment advances to boarding homes and residential health care facilities at their respective rates for the anticipated clientele. Available funds do not currently permit a commitment to advance payments to more expensive facilities, such as nursing homes, at this time. However, the Department deliberately made the scope of eligible facilities flexible enough in the rules to accommodate any future changes in the funding level.

COMMENT: NJAHCF asked for clarification whether the hospital staff member designated to monitor the placement and act as liaison to the provider at N.J.A.C. 10:38A-3.1(d) will be on duty 24 hours per day, seven days per week.

RESPONSE: This designated staff member will not be on duty 24 hours per day, seven days per week. However, liaison services from Division funded community mental health agencies should also be in place Statewide to assist in this monitoring and liaison service. In an emergency, community facilities should contact their local psychiatric emergency or designated screening service.

COMMENT: NJAHCF commented that the Interdisciplinary Treatment Team determination as to whether a patient and provider have adequately adjusted to each other should include consultation with the pre-placed patient, the provider and other interested party, if appropriate. Specific language was offered to add at N.J.A.C. 10:38A-3.1(e) to accomplish this purpose.

RESPONSE: The Department believes that such team determinations typically include interviews or consultations of this type. Nevertheless, to further promote thorough and fair team determinations, the Department agrees to add language similar to that which was offered at adopted N.J.A.C. 10:38A-3.1(f).

COMMENT: NJAHCF commented that the proposal was silent on the specificity of information that a provider would receive on a patient prior to pre-placement with the provider. Further, the commenter stated the opinion that a provider should receive the most comprehensive information available on a patient which is permissible by law, a patient or guardian should be allowed to authorize disclosure of the patient's records to the receiving facility and a prospective provider's staff should be allowed to interview patients and review their records at State psychiatric hospitals prior to the patient's pre-placement with the provider to the extent allowed under the law. Amendatory language to N.J.A.C. 10:38A-3.1(f) was offered by the commenter to accomplish these purposes.

RESPONSE: First, the Department notes that the issues raised in this comment are general and relate to the current and ongoing relationship between State psychiatric hospitals and patients and prospective community providers, rather than exclusively to a Pre-Placement Program. Amendatory language similar to that which was offered has been added to adopted N.J.A.C. 10:38A-3.1(g) to allow a patient or guardian to

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consent to the disclosure of hospital records to the provider, since this should be the current hospital practice. Additionally, the Department agrees that if the provider wants to interview the patient prior to placement, the provider should be allowed to. Language which establishes this policy for providers and patients wanting an interview has been added at N.J.A.C. 10:38A-3.1(g).

COMMENT: NJAHCF asked for clarification as to whether the term "alternate financial source" in N.J.A.C. 10:38A-3.1(j) would include Interim Assistance (N.J.A.C. 10:38) from the State psychiatric hospital.

RESPONSE: The term does include such Interim Assistance.

COMMENT: NJAHCF urged the Division to establish a per diem reimbursement rate for the 14 day pre-placement period that is above the current Supplemental Security Income per diem reimbursement rate.

RESPONSE: While the costs of some of the provider agencies may be different for these clients than others, the financial purpose of this program is to advance established SSI payment rates to providers and not to create new, higher rates.

COMMENT: DPA commented that the proposal contains no community support services during the Pre-Placement Program and that liaison or case management services should be available, as needed, to augment hospital-based services and improve the opportunity for successful adjustment.

RESPONSE: In addition, to the hospital-based services required by N.J.A.C. 10:38A-3.1(d), liaison services from Division funded community mental health agencies are appropriate to these circumstances and should also be in place Statewide to augment hospital-based services, as needed.

COMMENT: DPA offered an alternate definition for "Conditional Extension Pending Placement" at N.J.A.C. 10:38A-1.2.

RESPONSE: The Department accepts this alternate, more clear definition and amends the language accordingly.

COMMENT: DPA proposed "Conditional Extension Pending Placement" status as an alternative eligibility criteria to N.J.A.C. 10:38A-2.1(a)3 which requires three specific Interdisciplinary Treatment Team findings.

RESPONSE: The Department does not believe that every patient on CEPP status automatically satisfies these three requirements and, therefore, should be automatically eligible for placement by these criteria. N.J.A.C. 10:38A-3.1(g) makes it clear that patients on CEPP status may participate in this program, if they meet the eligibility requirements at N.J.A.C. 10:38A-2.1.

COMMENT: DPA commented that the proposal should be broadened to include authorization for county hospital participation.

RESPONSE: The administration of county hospitals is under the jurisdiction of the counties themselves. If any county chooses to implement a Pre-Placement Program, it would be eligible for reimbursement by the State for 90 percent of the cost of the program under P.L.1990, c.73. The Department supports such programs at the county hospitals and encourages each county to begin their implementation.

COMMENT: DPA commented that the proposal should not require that a patient reach the maximum available benefit from their hospitalization to be eligible for the program.

RESPONSE: The experience of Department staff has been that patients who have not reached the maximum available benefit from their hospitalization are not clinically appropriate for the services provided at boarding homes and residential health care facilities, which are considerably less intensive than hospital services.

COMMENT: DPA recommended additional eligibility criteria requiring an exceptional need for this program by a patient, based on experiencing placement rejections by providers, CEPP status or similar criteria. The commenter's purpose is to preserve the limited program funds available for patients who truly need additional incentives to be accepted by providers.

RESPONSE: The Department agrees with the intent of the comment, to maximize use of limited funds, but believes the application of this principle should be delegated to the judgement of treatment teams, since this practice would provide better overall outcomes than the more mechanical approach recommended by the commenter.

COMMENT: DPA commented that the proposal should include a statement that the patient may be returned to the hospital at his or her request.

RESPONSE: The Department agrees, to the extent that the patient continues to request his or her return after the basis for the request has been reviewed and efforts to satisfy the patient and maintain the placement have failed. Language to this effect has been added at N.J.A.C. 10:38A-3.1(e).

COMMENT: DPA commented that patients who are adjudicated "conditional release" by the courts should also be eligible to participate in the program.

RESPONSE: Patients conditionally released to the community by the court are eligible for Interim Assistance (see N.J.A.C. 10:38) which serves a similar function for discharged patients as the Pre-Placement Program would serve for patients not yet discharged from the hospital. Therefore, the Department believes that there should be no need for conditionally released patients to utilize the Pre-Placement Program.

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

CHAPTER 38A
PRE-PLACEMENT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

10:38A-1.1 Scope and Purpose

(a) The Pre-Placement Program shall be available to all eligible patients at each of the State psychiatric facilities operated by the Division. Community providers eligible to receive Pre-Placement Program payments from the State psychiatric facility for the cost of pre-placement care shall include, but not be limited to, licensed boarding homes and residential health care facilities.

(b) Certain patients at State psychiatric facilities have received the maximum available benefit from their inpatient psychiatric hospitalization in the judgement of their treatment team but have not had an opportunity to explore the suitability of or to demonstrate their ability to adjust to certain alternative available community placements. The purpose of the Pre-Placement Program is to provide such patients with the opportunity to test out a possible community setting and to serve those patients whose psychiatric history and hospital behavior threaten their ability to succeed at these placements unless it is financially and programmatically supported. Additionally, community service providers would receive authorization to ensure payment for their services prior to the client's receipt of either Interim Assistance or Supplemental Security Income benefits.

10:38A-1.2 Definitions

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

"CEO" means the Chief Executive Officer of a State psychiatric facility.

"Conditional Extension Pending Placement" means *[a patient legal status so determined by Court Order]* ***a patient's legal status as determined by a court and evidenced by a court order***.

"Department" shall mean the New Jersey Department of Human Services.

"Division" shall mean the New Jersey Division of Mental Health and Hospitals.

"Interdisciplinary Treatment Team" means a group of persons who are responsible for evaluating a client's treatment and service needs, monitoring the client's progress and assessing his or her readiness for discharge. The team is composed of hospital staff and community service representatives.

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS

10:38A-2.1 Program eligibility

(a) To be eligible for the Pre-Placement Program, including the supporting payments to community providers, the patient must:

1. Be an inpatient at a State psychiatric facility who is not judicially restrained from discharge;

2. Be 18 years of age or older;

3. Have been evaluated by their Interdisciplinary Treatment Team as:

i. Not likely to constitute a danger to self, others, or property, if residing at the community program;

ii. Having received the maximum available benefit from their inpatient psychiatric hospitalization; and

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iii. Possessing the capacity for successful adjustment at a specific, available community placement which is appropriate for pre-placement payments;

4. Be likely to meet the income and medical eligibility standards for Supplemental Security Income; and

5. Indicate his or her willingness to apply for both Interim Assistance and Supplemental Security Income, when appropriate.

SUBCHAPTER 3. PROGRAM STANDARDS

10:38A-3.1 Program standards and requirements

(a) Each eligible patient may participate in the Pre-Placement Program up to a maximum of 14 calendar days.

(b) Any hospital patient or any interested party on behalf of a hospital patient may initiate a Pre-Placement Program request to the patient's Interdisciplinary Treatment Team.

(c) Each patient approved as appropriate for the Pre-Placement Program by the Interdisciplinary Treatment Team shall be referred to the Discharge/Financial Coordinator for Interim Assistance eligibility determination.

(d) Each Chief Executive Officer (CEO) shall designate which facility staff are responsible to monitor the patient's adjustment at the community service provider and act as a liaison to that provider for assistance regarding adjustment issues.

(e) If a patient requests his or her return to the facility, the facility staff designated at (d) above shall review the placement situation and basis for the request and attempt to maintain the placement, if possible, and in the client's best interests. If these efforts do not succeed, and the patient continues to request his or her return during pre-placement period, the patient shall be returned to the facility.

*[(e)]***(f)*** A patient may be returned to the facility when his or her Interdisciplinary Treatment Team has concluded that he or she and the provider have inadequately adjusted to each other so that conditions supporting the likelihood of a successful discharge and placement to the provider are not well-established. ***Before making its decision, the Interdisciplinary Treatment Team should discuss the situation with and consider the input received from the patient, patient's family, the provider and any other interested party with relevant information.***

*[(f)]***(g)*** Each participating patient and provider shall receive a fact sheet from facility staff which summarizes the significant aspects of the program. The provider shall demonstrate its willingness to adhere to the program's policies and procedures as delineated in this chapter by signing an agreement to that effect with the referring facility. ***The patient or patient's guardian shall be given the opportunity to consent in writing to the disclosure of the patient's facility records to the provider prior to placement. If either a prospective provider or a patient wants to interview the other prior to placement, the interview shall be arranged by the hospital staff.***

*[(g)]***(h)*** Patients adjudicated as Conditional Extension Pending Placement may participate in the program but facility staff need to be careful that patient participation in the program and possible return to hospitalization due to unsuccessful adjustment involve notice to the court and be in accordance with court directives. Patients who are involuntarily committed may also participate in the program unless a court order directs otherwise.

*[(h)]***(i)*** State psychiatric facility staff shall adhere to appropriate internal directives regarding financial and administrative recordkeeping and payment methodology.

*[(i)]***(j)*** Whenever a patient successfully completes a Pre-Placement for 14 days with a provider, he or she shall be removed from that program status and no longer subject to return to the facility according to the standard contained in these rules (see (e) above). Patients who have completed the Pre-Placement Program and whose subsequent behavior indicates that they require psychiatric hospitalization must be screened in accordance with the procedures and standards contained in the Mental Health Screening Law (N.J.S.A. 30:4-27.1 et seq.).

*[(j)]***(k)*** Whenever a patient successfully completes a Pre-Placement for 14 days with a provider, an alternative financial source, such as Supplemental Security Income, for any continued cost of community care must be secured by the patient, with assistance from hospital staff, as needed, in order to maintain ongoing placement with that provider.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual
Elimination of Salary Regions
Adopted Amendments: N.J.A.C. 10:63-3.3 and 3.8

Proposed: February 1, 1993 at 25 N.J.R. 433(a).

Adopted: June 28, 1993 by William Waldman, Commissioner, Department of Human Services.

Filed: June 28, 1993 as R.1993 d.371, **without change**.

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b and c; 30:4D-12; N.J. State Appropriations Act, P.L. 1992, c.40; 42 CFR 447.200, 205, 250.

Effective Date: July 19, 1993.

Expiration Date: November 28, 1994.

Summary of Public Comments and Agency Responses:

There were two commenters on the proposal: Mr. James E. Cunningham, President, New Jersey Association of Health Care Facilities (NJAHCF), and Mr. Leonard Fishman, on behalf of the New Jersey Association of Non-Profit Homes for the Aging (NJANPHA).

COMMENT: Mr. Cunningham stated that his Association supports the adoption of the amendments as proposed. He also indicated that the Association supports the establishment of a panel of experts to thoroughly study the issue and, if appropriate, recommend changes to the methodology.

RESPONSE: The Department is proceeding with the adoption but is also willing to participate in a review to further study this issue.

COMMENT: Len Fishman, General Counsel to the New Jersey Association of Non-Profit Homes for the Aging (NJANPHA), claims that there is still a wage variation among nursing facilities across the State. He suggests that the single Statewide salary region was mandated by the State Legislature with little thought to its fairness or statistical validity.

Although Mr. Fishman refers to sources representing or within his organization that claim the former salary region system was "seriously flawed" and "unfair," he contends that the change to a single Statewide salary region means unforeseen and potentially catastrophic losses to some members of his Association. Mr. Fishman suggests that the Department should make nursing facility (NF) wage data available to the Legislature and to the public. He also suggests that the Department should prepare an analysis of whether the single Statewide salary region adequately accounts for wage variation and to explore alternative salary region structures.

Mr. Fishman also questions the Economic Impact statement. He suggests that the net impact of the change was understated at $1.9 million and should be $2.7 million. He notes that for "losers" under the change, losses will exceed $7.2 million per year. He also objected to the statement that for most "losing" facilities, rate increases from a routine prospective rate change effective July 1, 1992 will offset any decrease in revenues caused by this change. He asserts that the loss from the single Statewide salary region cannot be viewed as being offset by a routine prospective rate change. He asserts that NFs are significantly under-reimbursed by the Medicaid program.

Mr. Fishman also referenced pending legislative bills endorsed by his Association which would: (1) establish a Medicaid Salary Region Advisory Panel to make recommendations to the Legislature and Governor; and (2) create a partial hold harmless "corridor" that would limit a facility's losses under the single statewide salary region to $55,000 per year.

RESPONSE: The Department acknowledges and concurs with the comment that the change to a single salary region is the direct result of specific provisions contained in the New Jersey State Fiscal Year 1993 Appropriations Act. It notes, however, that when the CARE (Cost Accounting and Rate Evaluation) methodology was first established in 1977, the wage differentials (equalization factors) between the high and low salary regions was approximately 20 percent. As of 1990, the wage

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differential between the high and medium salary regions had become nominal and the differential between the low region and the higher regions had reduced to approximately seven percent.

The figures in the economic impact statement ($1.9 million net reduction in reimbursement) were derived from the legislative analysis of this change. The figure quoted by the commenter ($2.7 million net reduction in reimbursement) was based upon preliminary data accumulated by the Department and more closely represents the economic impact.

In response to the commenter's concern about "decreased revenues," the agency agrees that some NFs did not experience as great an increase in anticipated revenues as they would have received without this change.

As noted previously, the agency is willing to participate in a review to further study this issue.

Full text of the adoption follows:

10:63-3.3 Equalized costs

(a) In order to equitably develop and apply screens the following computation will be made:

1. (No change.)

2. Costs will be equalized to adjust for timing differences among NF's fiscal years.

3. The term "equalized costs" means the net amount of compensation costs (salary and fringe benefits) plus other expenses, less expense recoveries and nonallowable costs, adjusted for timing differences among NF's fiscal years.

4. For NFs which provide residential, sheltered or domiciliary care, equalized nursing facility costs will be determined by apportioning equalized cost in the same ratio as the apportionment of unequalized net expenses.

5. The equalized net routine expenses will be apportioned to residential/sheltered care and nursing facility care in the same ratio as unequalized net routine expenses are apportioned, except in the case of land and building related items (see sections 6 and 10, of this subchapter).

10:63-3.8 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services (RN's, LPN's and other) will be established as follows:

1. (No change.)

2. The percentage of hours paid for vacations, holidays, illness, and so forth (hours paid but not worked) to hours worked, will be ranked in descending order for all proprietary and voluntary NFs in the State. The percentage for the median NF for each class of facility will be selected as the Statewide norm for the percentage of hours paid but not worked for that class of facility.

3. (No change.)

4. The average equalized hourly compensation rate of each type of nurse (see N.J.A.C. 10:63-3.3) will be calculated for each class of facility.

i. The average equalized compensation rate for the median NF for each class of NF will be selected as the norm for the State.

ii. A separate calculation will be made for governmental facilities.

5. The compensation rates for each class of facility will be multiplied by the paid hours developed in (b)3 above for each (type) of nurse and aggregated for all three types.

6. The reasonableness limit for total nursing care will be established at 115 percent of this total, in order to allow for variations in staffing patterns, mix of nursing personnel, and so forth. This total will be adjusted for timing differences to each NF's base period.

(c)-(f) (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Requests for Fair Hearings; Direct Reimbursement for Prescriptions; Recovery of Incorrectly Paid Benefits

Adopted Amendments: N.J.A.C. 10:69A-5.4, 5.6 and 7.2

Adopted New Rules: N.J.A.C. 10:69-5.8, 10:69A-6.12 and 10:69B-4.13

Proposed: December 7, 1992 at 24 N.J.R. 4329(a).

Adopted: June 23, 1993 by William J. Waldman, Commissioner, Department of Human Services.

Filed: June 28, 1993 as R.1993 d.368, **without change**.

Authority: N.J.S.A. 30:4D-20, 22, 24, 36 through 42; N.J.S.A. 48:2-29.15, 16, 17; N.J.S.A. 48:2-29.31, 32.

Effective Date: July 19, 1993.

Expiration Date: N.J.A.C. 10:69—May 14, 1998.
N.J.A.C. 10:69A—March 26, 1998.
N.J.A.C. 10:69B—November 21, 1993.

Summary of Public Comments and Agency Responses:

The Division received one written comment from the New Jersey Pharmaceutical Association.

COMMENT: Proposed N.J.A.C. 10:69A-5.4(c)2 establishes standards for the Division to reimburse directly to PAAD-eligible persons for expenditures made by that person for prescription drugs, if their eligibility card is late in being delivered to them. The paragraph contains the phrase "or by a licensed mail order pharmacy services program." The commenter strongly objected to the inclusion of that phrase and asked that it be deleted for the following reasons:

> The proposal's Summary states "The PAAD Program continues its policy of excluding direct reimbursement for prescriptions purchased out-of-State: The PAAD program will not reimburse beneficiaries for prescriptions filled in out-of-State pharmacies." This Association fully supports these policies. Proposed N.J.A.C. 10:69A-5.4(c)2 states "The PAAD beneficiary must submit a prescription claim form and proof of purchase for each eligible prescription to the PAAD Bureau. The claim form must be completed by a participating New Jersey pharmacy, or by a licensed mail order pharmacy service program where the prescription is delivered to a New Jersey address."

The commenter asked that the "mail order pharmacy" reference be deleted based on the fact that no special "mail order pharmacy" reference be deleted based on the fact that no special "mail order pharmacy" license is issued by the New Jersey Board of Pharmacy, and the fact that any licensed New Jersey pharmacy can mail prescription drugs to patients upon request. The commenter stated that it could be assumed, based on the policy statements contained in the Summary, that the Division will not reimburse PAAD beneficiaries for prescriptions obtained from out-of-State mail order pharmacies, but it is uncertain of the Division's intent here. Any New Jersey licensed retail pharmacy can apply to become a PAAD program provider pharmacy and the commenter, therefore, objects to beneficiary reimbursement for drugs obtained from a nonparticipating pharmacy.

The commenter also notes that N.J.A.C. 10:69A-5.4(c)2 does not mention program restrictions, such as the 60 day supply limit, nor does it mention the required copayment, thus indicating the Program will reimburse over and above the legal limits placed by law on this program.

RESPONSE: The Division policy relevant to reimbursement of PAAD prescription services provided to a PAAD beneficiary by a licensed mail order pharmacy service program is as follows. In N.J.A.C. 10:69A-5.4(c)2, the PAAD program has regulatory authority to reimburse PAAD beneficiaries directly for prescription costs incurred due to delays in receipt of an eligibility card from the PAAD program. Under N.J.A.C. 10:69A-5.4(c)2, as part of the documentation requirements necessary for a PAAD beneficiary to request direct reimbursement, this section states, "The PAAD beneficiary must submit a prescription claim form and proof of purchase for each eligible prescription to the PAAD Bureau. The

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claim form must be completed by a participating New Jersey pharmacy, or by a licensed mail order pharmacy service program where the prescription is delivered to a New Jersey address."

It is not the intention of the PAAD program to provide direct payment to mail order pharmacy services in place of, or in addition to, pharmacy services provided by New Jersey pharmacies. The PAAD program proposes to recognize, however, the use of mail order pharmacy services, under extenuating circumstances, as an interim pharmacy service. Under certain circumstances, such as a delay in mailing of a PAAD eligibility card, a PAAD beneficiary may choose to pay for mail order pharmacy services because at the time service was rendered, the beneficiary was not aware that they were covered by the PAAD program and may not be aware of all its program restrictions. Moreover, such mail order arrangements often require lower out-of-pocket expenditures.

The inclusion of a reference to a licensed mail order pharmacy service program under N.J.A.C. 10:69A-5.4(c) is required in order for the PAAD program to administratively accommodate such services and provide direct reimbursement to PAAD beneficiaries for these prescriptions. In addition, PAAD reimbursement for such services is not made directly to an out-of-State mail order pharmacy service program, which is in compliance with N.J.A.C. 10:69A-4.2.

Concerning other restrictions, the Department notes that the PAAD eligibility manual (N.J.A.C. 10:69A) is intended to establish qualifications for the individual applicant(s) and/or beneficiaries. The policies governing prescription drugs are contained in N.J.A.C. 10:51-5, which was not part of the original proposal.

Full text of the adoption follows.

10:69-5.8 Appeal process

(a) When the Bureau of PAAD determines that an applicant is ineligible for Hearing Aid Assistance for the Aged and Disabled benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to the Bureau of Pharmaceutical Assistance to the Aged and Disabled, Division of Medical Assistance and Health Services, New Jersey Department of Human Services, CN 715, Trenton, New Jersey 08625-0715, within 20 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) The Bureau of PAAD will forward the hearing request to the Office of Administrative Law which will schedule the hearing and notify all parties of the date, time and location.

(c) The petitioner will have the burden of demonstrating that the Bureau of PAAD's determination deviates from the requirements and standards of the regulations and statute.

10:69A-5.4 Exception from normal standards

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

(c) In the event that mailing of the eligibility card is delayed, the PAAD Bureau will reimburse the PAAD beneficiary directly for the cost (minus a $5.00 co-payment per prescription) of all prescription drugs purchased by the person on or after the 30th day after his/her properly completed application was received by the PAAD Bureau, subject to the following conditions:

1. (No change.)

2. The PAAD beneficiary must submit a prescription claim form and proof of purchase for each eligible prescription to the PAAD Bureau. The claim form must be completed by a participating New Jersey pharmacy, or by a licensed mail order pharmacy service program where the prescription is delivered to a New Jersey address.

3. No direct reimbursement will be made for any drugs purchased after the date when the beneficiary receives his eligibility identification card.

10:69A-5.6 Responsibilities in the application renewal process

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

(d) The beneficiary has the responsibility to:

1.-2. (No change.)

3. Repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his or her behalf. Failure to fully repay the State for incorrectly paid benefits could cause the suspension of his or her PAAD benefits in the future, as well as possible withholding of all or some of his or her rebates or refunds which may be due him or her from the Division of Taxation.

10:69A-6.12 Appeal process

(a) When the Bureau of PAAD determines that an applicant is ineligible for benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to the Bureau of Pharmaceutical Assistance to the Aged and Disabled, Division of Medical Assistance and Health Services, New Jersey Department of Human Services, CN 715, Trenton, New Jersey 08625-0715, within 20 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) The Bureau of PAAD will forward the hearing request to the Office of Administrative Law which will schedule the hearing and notify all parties of the date, time and location.

(c) The petitioner will have the burden of demonstrating that the Bureau of PAAD's determination deviates from the requirements and standards of the regulations and statute.

10:69A-7.2 Recoveries for benefits incorrectly paid

(a) As provided in N.J.S.A. 30:4D-1 et seq., the Division may take all necessary action to recover the cost of benefits incorrectly paid on behalf of a beneficiary. If it is determined that an applicant's income exceeded the eligibility limit in a prior year, a new PAAD card will not be issued until the benefiiary and/or his or her spouse agrees to repay the benefits received incorrectly. If the beneficiary cannot repay the bill in full, a monthly repayment schedule will be established by the Program, but if the beneficiary fails to fulfill the requirements of the repayment agreement, future PAAD benefits may be suspended until the bill is paid in full.

1. (No change.)

(b) (No change.)

10:69B-4.13 Appeal process

(a) When the Bureau of Lifeline Programs determines that an applicant is ineligible for benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to the Bureau of Lifeline Programs, Division of Medical Assistance and Health Services, New Jersey Department of Human Services, CN 714, Trenton, New Jersey 08625-0714, within 20 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) The Bureau of Lifeline Programs will forward the hearing request to the Office of Administrative Law which will schedule the hearing and notify all parties of the date, time and location.

(c) The petitioner will have the burden of demonstrating that the Bureau of Lifeline Programs' determination deviates from the requirements and standards of the regulations and statute.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Medicaid Eligibility, Financial Eligibility Specified Low-Income Medicare Beneficiaries

Adopted Amendments: N.J.A.C. 10:72-1.1, 4.1 and 4.5

Proposed: March 15, 1993 at 25 N.J.R. 1042(b).

Adopted: June 23, 1993 by William Waldman, Commissioner, Department of Human Services.

Filed: June 28, 1993 as R.1993 d.369, **without change.**

Authority: N.J.S.A. 30:4D-3, 30:4D-7, 7a and c; P.L. 1992, c.208; 1902(a)(10)(E)(iii), 42 U.S.C. 1396a of the Social Security Act.

Effective Date: July 19, 1993.

Expiration Date: August 24, 1997.

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

Full text of the adoption follows:

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10:72-1.1 Program scope

(a) This chapter contains the criteria for Medicaid eligibility for certain pregnant women and children not eligible under the provisions of N.J.A.C. 10:81 and 82, as well as, certain aged, blind, and disabled persons not eligible under the provisions of N.J.A.C. 10:71.

1. (No change.)

2. Persons financially ineligible for Medicaid under the provisions of N.J.A.C. 10:71, 81 and 82 and who are income ineligible for Medicaid under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

i. Persons determined eligible for the Medically Needy Program may be also determined eligible as specified low-income Medicare beneficiaries.

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1.-3. (No change.)

4. Aged, blind, and disabled individuals (as defined in (b)3 above) who qualify as specified low-income Medicare beneficiaries.

i. Specified low-income Medicare beneficiaries must be residents of the State, must be receiving Medicare benefits, Parts A and B, and must meet the income and resource requirements specified in N.J.A.C. 10:72-4.1(b) and 4.5(b).

ii. The eligibility determination process for specified low-income Medicare beneficiaries is the responsibility of the Division of Medical Assistance and Health Services, through the Office of Pharmaceutical Assistance to the Aged (PAAD), using the standard PAAD application form.

iii. Persons determined eligible as specified low-income Medicare beneficiaries are entitled to payment of Medicare Part B Premiums only, beginning in the month of application and up to three prior months, but no earlier than January 1, 1993.

iv. The Division of Medical Assistance and Health Service shall promptly notify any applicant for, or recipient of the specified low-income Medicare beneficiary benefit, in writing, of any agency decision affecting the application disposition or the receipt of the benefit. When a decision relates to any adverse action which may entitle an individual to a fair hearing, the action may not be implemented until at least 10 days after the mailing of the notice. Such notices shall conform with provisions at N.J.A.C. 10:72-5.1(b).

(c) (No change.)

10:72-4.1 Income eligibility limits

(a) Income limits for Medicaid for aged, blind, and disabled persons (except for specified low-income Medicare beneficiaries), as well as children six years of age or older covered under the provisions of this chapter will be based on 100 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with Sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be 1/12 of the annual poverty income guideline rounded down to the next whole dollar amount for household unit sizes of one and two for aged, blind, and disabled individuals and for the appropriate family size for children aged six years or over. The annual revision to the Federal poverty income guideline will be effective for purposes of this section with the first day of he year for which the poverty income guideline is promulgated.

(b) Effective with the first month of coverage, January 1, 1993, income limits for specified low-income Medicare beneficiaries shall be based on 110 percent of the poverty income guidelines as defined by the U.S. Department of Health and Human Services in accordance with Sections 1902(a)(10)(E)iii of the Social Security Act, 42 U.S.C. 1396a. Effective January 1, 1995, the income limits will be set at 120 percent of the Federal poverty level.

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

(e) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a), (b), (c), or (d) above as applicable.

1. (No change.)

2. With the exception in (e)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

10:72-4.5 Resource eligibility

(a) (No change.)

(b) Aged, blind or disabled persons (including specified low-income Medicare beneficiaries) must meet resource eligibility criteria as specified below in order to be eligible for benefits under this chapter. Eligibility for benefits does not exist in any month in which the countable resources of an aged, blind, or disabled person exceeds the limits of $4,000 for an individual and $6,000 for a couple.

1.-3. (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Notice of Administrative Changes
Filing a Claim at an Adult or Juvenile Institution or Satellite Unit; Filing a Claim at a Juvenile Community Residential Center; and Filing a Claim at an Adult Community Service Center
N.J.A.C. 10A:2-6.2, 6.3 and 6.4

Take notice that the responsibility of investigating inmate property claims at an adult or juvenile institution or satellite unit has been reassigned to the Director of Custody Operations or his or her designee. Also, due to the November 19, 1992, organizational restructuring within the Department of Corrections, all references to Division of Adult Institutions and Division of Juvenile Services have been changed to Division of Operations. This notice of administrative change is published pursuant to N.J.A.C. 1:30-2.7.

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

10A:2-6.2 Filing a claim at an adult or juvenile institution or satellite unit

(a) (No change.)

(b) The Superintendent or his or her designee shall submit the Form 943-I to the [Internal Affairs Unit] **Director of Custody Operations or his or her designee** for investigation and preparation of a report. The investigation conducted by the [Internal Affairs Unit] **Director of Custody Operations or his or her designee** shall consist of, but not be limited to:

1.-2. (No change.)

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

(e) The Business Manager shall review the Form 943-I and the [Internal Affairs Unit's] **Custody Operations'** investigative report and complete Form 943-II CERTIFICATION OF INMATE CLAIM indicating the Business Manager's recommendation to approve or deny the claim and the reasons therefor.

(f) Form 943-I, Form 943-II and the [Internal Affairs Unit's] **Custody Operations'** investigative report shall be submitted, by the Business Manager, to the Superintendent to be denied or recommended for approval.

(g)-(h) (No change.)

(i) The signed Invoice Form AR 50/54 along with Forms 943-I, 943-II, 943-III and the [Internal Affairs Unit's] **Custody Operations'** investigative report shall be submitted by the Superintendent to the appropriate Assistant Commissioner for review.

(j)-(n) (No change.)

10A:2-6.3 Filing a claim at a juvenile community residential center

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

(e) If the Superintendent recommends approving the claim, the Superintendent shall submit Form 943-I and a copy of the investigative report to the Executive Assistant of the Assistant Commissioner, Division of [Juvenile Services] **Operations**, to be denied or recommended for approval.

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(f)-(g) (No change.)

(h) Upon receipt of the signed Form AR 50/54, the Superintendent shall complete Form 943-III REVIEW OF INMATE CLAIM and submit Form AR 50/54 and Forms 943-III to the Executive Assistant. The Executive Assistant shall submit Form 943-I, 943-II, 943-III, Form AR 50/54 and the investigative report to the Assistant Commissioner, Division of [Juvenile Services] **Operations**, for review.

(i)-(k) (No change.)

(l) When a claim is not in compliance with technical requirements, the Chief, Bureau of Accounts, shall return the entire packet to the Assistant Commissioner, Division of [Juvenile Services] **Operations**, with the reasons therefor.

(m) (No change.)

10A:2-6.4 Filing a claim at an adult community service center

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

(e) If the Superintendent recommends approving the claim, the Superintendent shall submit Form 943-I, Form 943-II, 943-III, Form AR 50/54 signed by the inmate and the investigative report to the Chief, Bureau of Community and Professional Services, within the Division of [Adult Institutions] **Operations,** for review.

(f) (No change.)

(g) If the Chief, Bureau of Community and Professional Services recommends approving the claim, he or she shall submit the entire packet of documents to the Assistant Commissioner, Division of [Adult Institutions] **Operations**, for review.

(h)-(j) (No change.)

(k) When a claim is not in compliance with the requirements of this section, the Chief, Bureau of Accounts, shall return the entire packet to the Assistant Commissioner, Division of [Adult Institutions] **Operations**, with the reasons therefor.

(l) (No change.)

INSURANCE

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Obligations of Licensees to the Public and to Each Other

Adopted Amendment: N.J.A.C. 11:5-1.23

Proposed: October 5, 1992 at 24 N.J.R. 3486(a).

Adopted: June 24, 1993 by the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Filed: June 24, 1993 as R.1993 d.365, **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. 45:15-6.

Effective Date: July 19, 1993.

Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Real Estate Commission received one comment on this proposed amendment. The New Jersey Association of Realtors supported the adoption of the amendment and suggested two revisions to the proposal to clarify the text of the amended rule. The Association suggested that the phrase "within five business days of the offer having been presented" which appeared in the last sentence of paragraph (e)2 be revised to read "at the time the offer is presented." By doing so, this portion of the rule would read consistently with the text of subsection (d) which requires licensees to transmit forthwith every written offer received on real property or interests therein. The second change suggested by the New Jersey Association of Realtors was to have the phrase "in effect" in paragraph (e)3 of the proposed amended rule be expanded to include fully executed contracts or leases prepared by licensees which have not emerged from the attorney review period provided for in such contracts or leases.

RESPONSE: The Commission recognized the merits of the suggested textual revisions and has incorporated them into the reformated adopted rule.

Summary of Agency-Initiated Changes:

In an effort to simplify the language of the amended rule so as to enable licensees to better understand it, the Commission made several textual changes to the rule and reformated the subsections of the rule effected by these amendments.

The Commission determined to use of the term "back-up offer" in the rule and to include a definition of that term in paragraph (e)1. By doing so, a substantial amount of repetitive verbiage in the proposal was eliminated. As a result, paragraph (e)1 now contains the definition of the term back-up offer. New paragraph (e)2 (old paragraph (e)1) now incorporates the term back-up offer in several places. In addition, the Commission determined to replace the reference to a licensee "notifying" an owner to consult an attorney before taking any action on a back-up offer with the requirement that licensees "advise" the owner to do so. This change was deemed desirable because licensees in most cases act as the agents of their principals, and generally are in a position where they can advise a principal on what actions to take, but they cannot compel a principal to take any particular action.

New paragraph (e)3 (old paragraph (e)2) has also been revised to include references to "back-up offers" and to include the suggestion made in the comment that the notice to be supplied by a cooperating broker to a listing broker of the cooperating broker's receipt of a back-up offer is to be delivered to the listing broker "at the time the offer is presented." As a result of the inclusion of the references to "back-up offers," the final sentence in paragraph (e)2 of the proposal and all of paragraph (e)3 of the proposal are being eliminated.

Finally, because the subject matter of paragraph (e)4 in the proposal does not deal specifically with the subject of how licensees should handle back-up offers, a determination was made to recodify that paragraph as subsection (f), and to recodify subsections (f) and (g) as subsections (g) and (h).

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

11:5-1.23 Obligations of licensees to the public and to each other

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

(d) If any offer on any real property or interest therein is made orally, the licensee shall advise the offeror that he is not obligated to present to the owner or his authorized representative any offer unless the offer is in writing, and the licensee shall secure forthwith the offer in writing. Unless a writing containing or confirming the terms of the listing agreement otherwise provides, the licensee shall transmit forthwith every written offer on any real property or interest therein presented to or obtained by the licensee during the term of the listing to the owner or his authorized representative. For the purposes of this section, the term of a listing shall be deemed to expire either on the termination date established in the listing agreement, or *[where a contract of sale or a rental agreement has been signed,]* upon the closing of *[such transaction]* ***a pending sale or lease***. If any acceptance of an offer is given orally, the licensee shall secure forthwith the acceptance in writing.

(e) *[Post-contract]* ***Back-up*** offers shall be handled as follows:

1. As used in this subsection, the term "back-up offer" shall mean a written and signed offer to purchase or lease an interest in real estate which is received by a licensee at a time when a previously executed contract or lease pertaining to the same interest in real estate is pending and in effect, having survived attorney review if it was subject to such review. Offers obtained while a previously executed contract or lease is still pending attorney review are not considered back-up offers and must be presented as provided in (d) above.

*[1.]***2.*** Whenever a licensee transmits a *[written offer to buy or lease a property to an owner after a contract for the sale or lease of that property has gone into effect]* ***back-up offer to an owner***, the licensee shall *[notify]* ***advise*** the owner in writing to consult an attorney before taking any action on the *[subsequently transmitted]* ***back-up*** offer, and shall retain a copy of such written notice as a business record in accordance with N.J.A.C. 11:5-1.12.

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*[2.]***3.* Whenever a licensee *[has presented to him or her]* ***receives*** a *[written offer to purchase or lease a property on which a contract of sale or lease has already gone into effect]* ***back-up offer***, the licensee shall notify the offeror in writing that the property *[in]* ***to*** which the offer pertains is the subject of a ***pending*** contract of sale or lease *[which is then in effect, but]* ***and, in the event that the licensee receiving the back-up offer is not licensed with the listing broker, a copy of that notice shall be delivered to the listing broker at the time the offer is presented. The said notice*** shall not disclose *[in such notice]* the price and terms of the ***pending*** contract or lease *[then in effect]*. A copy of such written notice shall be retained by the licensee as a business record in accordance with N.J.A.C. 11:5-1.12. *[Where the licensee to whom the offer was first presented is not affiliated with the listing broker, a copy of the written notice from that licensee to the offeror shall be delivered to the listing broker within five business days of the offer having been presented to the licensee.

3. For the purposes of this section, a contract or lease shall be deemed in effect upon the expiration of any attorney review period which the contract or lease is subject to or, if the contract or lease is not subject to attorney review, upon delivery of the fully executed final contract or lease to all parties.]*

*[4.]***(f)* It shall be the duty of *[the]* ***a*** licensee to recommend that legal counsel be obtained whenever the interests of any party to *[the]* ***a*** transaction seem to require it.

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

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Joint Insurance Funds for Local Governmental Units Providing Group Health and Term Life Benefits

Adopted New Rules: N.J.A.C. 11:15-3

Proposed: February 1, 1993 at 25 N.J.R. 436(a).

Adopted: June 16, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: June 18, 1993 as R.1993 d.354, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, and 40A:10-36 et seq.

Effective Date: July 19, 1993.

Expiration Date: October 26, 1994.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received three timely written comments from two law firms and representatives of various joint insurance funds providing health benefits as follows:

1. White and Williams (on behalf of the Camden/Burlington Regional Employee Benefits Fund);

2. Riker, Danzig, Scherer, Hyland and Perretti (on behalf of CIGNA Companies); and

3. The Bergen Municipal Employee Benefits Fund, Camden/Burlington Regional Employee Benefits Fund, North Jersey Municipal Employee Benefit Fund, Ocean/Monmouth Regional Employee Benefits Fund.

COMMENT: One commenter stated that the use of the term "trust fund account" as used in various provisions of the rules (see, for example, N.J.A.C. 11:15-3.6(a)11 and 3.13) may be inappropriate. The commenter stated that the phrase "trust fund account" suggests that there is a trust agreement which names certain individuals or entities as the trustees and which details how such monies are to be controlled by the trustees. The commenter believes that with respect to joint insurance funds (JIFs), such an agreement neither exists nor is contemplated. Accordingly, the commenter suggested that the phrase "trust fund account" be replaced with the phrase "custodial accounts."

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. These rules are substantially based on the rules governing the formation and operation of municipal JIFs which are formed to provide property/casualty coverages, N.J.A.C. 11:15-2, which became effective on December 3, 1984. The term "trust fund account" is consistent with the terms utilized in N.J.A.C. 11:15-2 (see for example N.J.A.C. 11:15-2.13). The Department believes that the term "trust fund account" has developed a common usage meaning among the various JIFs as this term has been utilized since the time N.J.A.C. 11:15-2 originally became effective.

Moreover, the Department believes that the term "trust fund account" is more descriptive than the term "custodial account" in that the term recognizes that these accounts are actually to be held in trust by the fund commissioners as fiduciaries for the benefit of fund claimants. Accordingly, the term "trust fund account" more accurately describes the type of account to be established.

Finally, the revision of the term "trust fund account" with respect to health JIFs would be inconsistent with terms as they apply to property/casualty JIFs and thus may result in confusion among the various JIFs. For the foregoing reasons, the Department believes that it is reasonable and appropriate to retain the term "trust fund account" as it is utilized in these rules.

COMMENT: One commenter stated that N.J.A.C. 11:15-3.6(b)6 and 3.13 inappropriately expand the scope of the contents of the "indemnity and trust agreement" from that contained in the definition of the term as set forth in N.J.A.C. 11:15-3.2, and from that which was previously understood by the various JIFs.

The commenter specifically stated that the indemnity and trust agreement as described in N.J.A.C. 11:15-3.6(b)6 duplicates subject matter that the bylaws of a JIF must contain as set forth in N.J.A.C. 11:15-3.6(a). Moreover, the commenter stated that the contents of the indemnity and trust agreement as set forth in N.J.A.C. 11:15-3.6(b)6 would be more appropriately contained in the plan of risk management. The commenter thus suggested that the scope of an indemnity and trust agreement be limited to joining a JIF and agreeing to be liable for the JIF's obligations, with principal operating documents being set forth in the JIF's bylaws and plan of risk management.

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. As noted in the response to the previous comment, these rules are based on N.J.A.C. 11:15-2, which govern the formation and operation of property/casualty JIFs, and which have been in effect since December 3, 1984. The requirement that the indemnity and trust agreement provide for the establishment of separate trust fund accounts to the extent that a JIF retains risk is consistent with the requirements in N.J.A.C. 11:15-2 (see definition of "indemnity and trust agreement" at N.J.A.C. 11:15-2.2). The establishment of separate trust fund accounts is a basic operating principle and regulatory requirement of JIFs that retain risk. The Department believes that it is reasonable and appropriate that establishment of trust fund accounts be included in the indemnity and trust agreement as this provides for specific disclosure of the responsibilities of the various members of the JIF regarding basic operations of the JIF.

Further, the Department does not believe that it is appropriate to include this information within the plan of risk management. The plan of risk management is more likely to change on a periodic basis than the indemnity and trust agreement, which tends to remain unchanged throughout the JIF's existence. Further, the Department does not believe that providing for the establishment of trust fund accounts in the indemnity and trust agreement is duplicative of information required to be contained in the bylaws set forth in N.J.A.C. 11:15-3.6(a)11. This provision does not specifically require that trust fund accounts be established. Rather, the provision only requires that the bylaws contain procedures governing trust fund accounts, including transfers, withdrawals and distribution of surplus. Accordingly, the requirement in the bylaws relates to specific procedures regarding transfers of monies to and from trust fund accounts and methods by which they will be maintained, rather than the underlying requirement that trust fund accounts be established.

Finally, as noted previously, the requirement that the indemnity and trust agreement provide for the establishment of separate trust fund accounts, rather than the plan of risk management, has existed since December 1984. Apparently, such establishment procedures have not heretofore proved to be problematic for those JIFs to administer. The Department believes that revising the procedures as they relate solely to health JIFs may result in confusion among the various JIFs from those procedures which were previously applied. Accordingly, the Department believes that the provisions as proposed are reasonable and necessary and that no change is required.

COMMENT: One commenter expressed concern with N.J.A.C. 11:15-3.20(a), governing refunds of surplus monies of the JIF to its

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members. This rule as proposed requires that a JIF determine the amount of money to be refunded not later than 90 days after the end of the fiscal year. A refund of at least 50 percent of the amount declared to be refundable must be made not later than 120 days after the end of the fiscal year, with any remaining amounts being refunded not later than 180 days after the end of the fiscal year. The commenter stated that a determination before the end of 90 days would be problematical because the determination would be based on unaudited financial statements as of year end. The commenter stated that at this point, while an average of 79.3 percent of the year's claims will have been paid, there is substantial variability in the incurred but not reported (IBNR) reserve. The commenter stated that plus or minus 2.5 percent of the year's total claims would not be unreasonable, and represents a "swing" of $500,000 on a $10 million loss fund. In addition, the commenter stated that the determination within 90 days may be further complicated by reinsurance audits or changes in third-party administrators.

Accordingly, the commenter suggested that this rule be revised to provide that: (1) except with an extension from the Department, JIFs must decide on a dividend not later than six months after the year; (2) 50 percent of the dividend shall be payable not later two months after approval of the Department; and (3) the remainder shall be payable not later than two months after approval by the Department that the year may be closed.

RESPONSE: The Department did not intend N.J.A.C. 11:15-3.20(a) to require that a JIF determine that all surplus monies may be refunded. Rather, the Department intended this provision to require that a JIF make a determination within 90 days after the end of the fiscal year of amounts that it believed may be safely refundable. As the commenter itself noted, an average of 80 percent of the year's claims will have been paid by the end of that 90 day period. Accordingly, the Department anticipated that the JIF's actuaries would be in a position to estimate the amount of surplus, if any, that may be safely distributed based on the information available at that time and in consideration of possible variations in IBNR, reinsurance audits, third party administrators or other variables.

However, in order to provide sufficient time to make an accurate estimate of amounts that may be refundable, and thereby address the commenter's concerns, the Department has determined that it is reasonable and appropriate to revise this provision to require that a JIF determine amounts to be refundable not later than 180 days after the end of the fiscal year, unless such period is extended by the Commissioner for good cause shown. The time frames for the actual distributions of amounts to be refunded are similarly extended an additional 90 days. Accordingly, the rule as revised provides that a refund of at least 50 percent of the amount declared to be refundable shall be made not later than 210 days after the end of the fiscal year, and a refund of the remaining amount shall be made not later than 270 days after the end of the fiscal year.

The Department, however, does not believe it is reasonable, necessary or appropriate to revise the rule as suggested by the commenter to provide for approval of an individual dividend or closure of a fund year, for two reasons. First, the rule as proposed does not require specific Department approval for an individual refund or for the closure of a fund year. Such new requirements may not be included now upon adoption of the rules as interested parties must be afforded notice and an opportunity to comment. Secondly, such a change is unnecessary since the rules as proposed require that a JIF submit its procedures governing distributions of surplus and closure of fund years (see N.J.A.C. 11:15-3.6(a)11 and (d)20). Accordingly, the JIF must submit its general procedures for distributions of refunds and closure of fund years as part of its bylaws for approval by the Department. Once approved as part of the JIF's bylaws, separate approval to operate pursuant to those approved procedures is unnecessary. The Department thus believes that the rules as revised should address the commenter's concerns with respect to time frames for an accurate determination of refunds of any surplus monies, while ensuring consistency with the general regulatory framework established by these rules.

COMMENT: One commenter expressed concern with N.J.A.C. 11:15-3.6(b)6ii, which provides that, except as permitted in N.J.A.C. 11:15-3.6(b)6iii, a JIF must create a separate trust account for employee contributions. The commenter stated that in the case of municipalities, most employee benefits are non-contributory, and where there is a contribution, it is not adequate to cover the cost of the benefit to the employee. Accordingly, the commenter expressed support for the exception provided by N.J.A.C. 11:15-3.6(b)6iii, and believed that it is highly unlikely that a JIF would operate without the exception.

The commenter stated, however, that since the "concept" of a separate employee contribution trust fund exists in the rules, even though such trust funds are unlikely to be established in reality, the rules should be clarified to address various questions raised by a separate employee contribution trust fund. Such clarifications would include answering the following questions: (1) who pays an additional assessment related to a deficit in an employee contribution account and how would a JIF charge employees an additional assessment since the local unit is a member of the JIF, not the employee?; (2) who receives the dividend related to a surplus in an employee contribution account? The commenter stated that the member local unit will pay any additional assessments and therefore it appears that the member local unit would be entitled to any dividend; (3) who is responsible if an employee fails to make the required premium payment? The commenter stated that the JIFs believe that the receivable is the obligation of the member local unit; and (4) whether the JIF is responsible for accounts for employee contributions billed directly by the member local units. The commenter stated that in most cases, the local unit collects the contributions from the employee and the JIFs only bill the employee directly in some retiree situations.

In consideration of these questions and because the commenter believed separate trust fund accounts for employee contributions are not practical and will not likely be utilized, the commenter suggested that the rules eliminate the provision for the establishment of separate accounts for employee contributions as set forth in N.J.A.C. 11:15-3.6(b)6ii.

RESPONSE: Upon review of the commenter's concerns, the Department has determined not to change this provision. The requirements in the rules regarding separate trust accounts for employee contributions is intended merely to provide an identification and tracking mechanism by which amounts contributed by employees to the operations of the JIFs may be recorded and determined. This will enable the Department, employees, and the JIF itself to determine amounts actually contributed by employees. The Department anticipates that JIFs should be in a position to establish appropriate procedures to identify and track employee contributions through adequate accounting records as permitted pursuant to N.J.A.C. 11:15-3.6(b)6iii. However, to the extent a JIF is unable to demonstrate that it may establish such procedures, the rules require that the JIF establish a separate account for such purpose.

The Department recognizes that a number of questions are raised with respect to employee contributions as noted by the commenter. However, the Department believes that such issues arise regardless of the method by which employee contributions are identified and tracked (that is, through accounting or through the establishment of a separate trust account). In either case, the employee has paid monies, whether sufficient by itself to cover the employee's benefits or not, to the operations of the JIF. The Department believes that issues regarding assessments on employees, refunds to employees and the other issues noted by the commenter may not be resolved by the Department, but rather by the JIF, the individual members, and employees through collective bargaining. For example, the Department will not mandate that additional assessments be levied directly on an employee or that refunds be given directly to employees. This matter should be left to the JIF through negotiations with its members and members' employees to determine. Similarly, with respect to accounts billed directly to the employee by the member local unit, the method by which such recoverables or receivables are collected is a matter for the JIF (through consultation with its members and the members' employees) to establish and implement.

The Department, therefore, does not believe that retaining the provision in N.J.A.C. 11:15-3.6(b)6ii will result in any additional adverse impacts on the implementation or operation of a JIF than would otherwise result. The Department therefore believes that it is reasonable and appropriate to retain this provision.

COMMENT: One commenter expressed concern with N.J.A.C. 11:15-3.13 as it relates to the establishment of a contingency account. Although the commenter strongly supported the concept set forth in the rule, it suggested the following changes: (1) eliminate contingency accounts for employee contributions because employees will not be charged additional assessments and the commenter believes that no JIF will establish employee contribution trust fund accounts in any case; (2) the 2.5 percent per year limitation on the amount transferred from surplus should be on a member by member basis tied to the member's share of the JIF's IBNR reserves for that period at the time the local unit

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was a member; and (3) transfers from a contingency account should be made by a member local unit to offset what would otherwise be an additional assessment. The commenter stated that these changes will provide a larger contingency reserve creating financial stability, while ensuring that a member local unit which leaves the JIF will quickly receive its share of the contingency account. In order to effectuate these changes, the commenter suggested that N.J.A.C. 11:15-3.13(b) be revised to read as follows:

(b) A fund may establish by resolution a separate trust fund account for contingencies and may include as a part of its budget an assessment for this account. The resolution shall provide a formula for the equitable assessment of members for the account, specify the uses of the contingency account, and provide a formula for the equitable distribution of return of contingency funds to terminated or withdrawing members in accordance with the procedures and time frames of N.J.A.C. 11:15-3.20.

(1) In any one year an assessment shall not exceed 2.5 percent of the fund's current fiscal year earned income. In addition, the fund may also transfer to the contingency account any surplus return provided, however, that no member shall be assessed or have a portion of its refund transferred to a contingency account if such assessment or transfer would cause the member's share of the contingency account to exceed that member's pro rata share of the fund's IBNR reserve for those fund years during which the member participates. The annual and aggregate limitations on the amount of the contingency account set forth herein may be increased with the prior approval of the Commissioner.

(2) By resolution, a fund may transfer funds from a contingency trust fund account to a claims or loss retention trust fund account to pay claims, allocated claim expenses, and reinsurance and stop-loss premiums in a fund year which has an inadequate statutory balance. The transfer shall specify the amount of the deficiency chargeable to each member local unit computed pursuant to N.J.A.C. 11:15-3.16 and such amount shall be debited from that member's share of the contingency account. The transaction shall be accounted for as a permanent transfer, and the fund shall notify the Department within 30 days of any such transfers.

(3) A fund shall not transfer fund to a claims or loss retention trust fund account from a contingency trust fund. (sic)

RESPONSE: Upon review of the commenter's suggestion, the Department has determined not to change this provision. The Department initially notes that the suggested change to N.J.A.C. 11:15-3.13(b) is unclear in that, although not specifically stated, the commenter apparently suggested that paragraph 3 remain unchanged, but it does not specifically comment on whether paragraphs 4 and 5 should remain unchanged.

Nevertheless, the Department does not believe that any change to this provision is reasonable, necessary or warranted. The commenter essentially suggested that the provision be revised to: (1) permit members to deposit any distributions received as a refund into the contingency account, and that such distribution would not count toward the 2.5 percent annual aggregate cap; and (2) eliminate the overall 10 percent cap on the amount of a contingency account. These changes would essentially negate the purpose for which the caps are provided in the rules. The purpose of the establishment of a contingency account is to help eliminate the need for a supplemental assessment on members due to unforeseen circumstances or a "spike" in the claims experience of the JIF. However, it does not obviate the need to ensure that assessments are determined in an actuarially sound manner and are sufficient to cover expected losses. Permitting a contingency account to become too large may result in assessments being kept artificially low with the anticipation that monies from the contingency account may be utilized if those assessments prove inadequate. The Department believes that the 2.5 percent annual and 10 percent aggregate caps on the amount that a contingency account may contain is consistent with operating principles of health insurance companies and other similar entities (such as nonprofit service corporations) which maintain contingency reserves. The Department also notes that the rules as proposed provide that the annual and aggregate caps on the contingency account may be increased with the Commissioner's prior approval. The Department believes that this "safety valve" should provide JIFs with requisite flexibility to establish a "larger" contingency account if the JIF demonstrates to the Commissioner the necessity of such an account.

The Department similarly does not believe that it is reasonable or appropriate to require that the transfer specify the amount of deficiency chargeable to each member local unit. Assessments for the contingency account are specifically based on the appropriate formula for assessing members based on their participation in the JIF as set forth in the JIF's bylaws and plan of risk management approved by the Commissioner. Similarly, any refunds from a contingency account upon the withdrawal of a member shall be based on the member's pro-rata share (see N.J.A.C. 11:15-3.13(b)). Indeed, the rules require that a JIF maintain accounting records on contingency accounts, including sources of contributions to the account, interest earned, and each member's pro-rata share (see N.J.A.C. 11:15-3.13(b)5). Accordingly, further revision to the rules with respect to identifying deficiencies in the contingency account allocable to each member is unnecessary.

Moreover, the Department notes that an individual member local unit may set aside monies for contingencies in its own budget. Accordingly, the member can either utilize refunded monies for its own contingency account against future assessments, or permit the JIF to retain the refund to be applied towards any future assessment against that member (see N.J.A.C. 11:15-3.20(c)).

Finally, with respect to contingency accounts for employee contributions, as noted in the response to the previous comment, this requirement is designed merely to ensure that a JIF accurately identifies and tracks employee contributions. As discussed previously, the Department believes this requirement is reasonable and appropriate.

For the foregoing reasons, the Department believes that the present procedures governing the establishment of contingency accounts is both reasonable and appropriate and that no change is required.

COMMENT: One commenter stated that because a JIF is a different vehicle from a conventional insurance product, the Department's regulatory oversight is important. Employees of participants in JIFs providing health benefits are not protected by the New Jersey Life and Health Insurance Guaranty Association Act (unlike policyholders of life and health insurers). Therefore, the commenter stated that an insolvent or impaired JIF will create financial hardship on its participants, their covered employees and possibly local taxpayers. Accordingly, the commenter believes that the Department should take steps to ensure solvency and to help ensure that participants and their covered employees are offered products that are properly reserved and not made more marketable because they rely upon "unsound" insurance principles. The commenter also stated that this would help to create a "level playing field" between insurance company products and JIF options.

The commenter thus suggested that the rules require a proposed JIF to include additional information as part of its plan of risk management. The commenter stated that the plan of risk management should include a certified pro forma budget covering the first three fiscal years of the JIFs operations. The commenter suggested that the budget should be required to be based on the JIF's anticipated level of mature claims experience, and, at a minimum, the budget should detail: (1) proposed assessments; (2) the establishment, maintenance and administration of actuarily sufficient reserves; (3) the proposed amount of retained liability; (4) the amounts, limits and attachment points of excess (stop-loss) insurance or reinsurance; and (5) proposed expenses.

In addition, the commenter suggested that a JIF's plan of risk management: (1) contain procedures governing the establishment, maintenance and administration of reserves that are based on the anticipated level of the mature claims experience of the JIF; (2) detail the methodology used to calculate the policy and claims reserves for its first three fiscal years of operations, and that these reserves should be based upon the anticipated level of the mature claims experience of the JIF and other ordinary, prudent, and actuarial assumptions; and (3) disclose initial and renewal assumptions for the first three fiscal years of the JIF's operation, including rating assumptions and methodologies.

The commenter further suggested that the pro forma budget and assumptions and methodologies applied should be required to be certified to be actuarially sufficient by an independent actuary.

The commenter stated that the suggested requirements are similar to the requirement that a life and health insurer maintain adequate reserves. The commenter stated that while the suggested changes do not mandate a certain level of reserve, stop-loss insurance or any of the other elements, presentation of a pro forma budget in the suggested form would provide the Department with a complete analysis of necessary financial information and assumptions related to the proposed JIF, and would enable the Department to review the JIF's assumptions and methodologies to determine if they are valid. Additionally, the commenter stated that the anticipated level of mature claims experience for the first three fiscal years is an appropriate measure for reserves; assessments; retained liability; amounts, limits and attachment points of excess (stop-loss) insurance or reinsurance; and expenses because a measure based upon claims before a mature level is reached or during

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the "growth years" of the JIF will likely result in inadequate reserving and erroneous stop-loss cost assumptions during the "claim lag." The commenter stated that inadequate reserves and stop-loss cost assumptions, may increase the likelihood that assessments will dramatically increase in future years.

RESPONSE: Upon review of the commenter's suggestions, the Department has determined that no change is required. The Department initially notes that JIFs are not insurers and the statutory authority for the creation of such JIFs (N.J.S.A. 40A:10-36 et seq., specifically N.J.S.A. 40A:10-48) and rules (N.J.A.C. 11:15-2 and these rules) recognize that distinction.

Moreover, as noted previously, the Department based these rules for the regulation of health JIFs on existing rules governing property/casualty JIFs (N.J.A.C. 11:15-2). The information requirements for a proposed JIF are substantially similar to those required for proposed property/casualty JIFs, appropriately modified and expanded to address concerns governing the provision of health benefits to employees and other covered individuals. Indeed, the Department believes that the rules as currently proposed essentially require that a JIF provide all of the information suggested by the commenter, with the exception of requiring projections on three years of experience based on "mature" claims. For example, the rules require that a proposed JIF submit its bylaws, which must contain: (1) procedures for the assessment of members and the establishment and maintenance of appropriate reserves in accordance with sound actuarial principles, including the assumptions and methodology used for the calculation of policy and claim reserves; (2) procedures for the purchase of direct insurance or reinsurance; (3) a feasibility study which includes a pro forma budget and assessments for the JIF's first fiscal year; and (4) a certification by an actuary that the pro forma budget is actuarially sound. See N.J.A.C. 11:15-3.6(a). In addition, the proposed JIF must submit a plan of risk management, which must contain: (1) detailed information including the lines of coverage to be provided and the minimum participation required of each member; (2) the limits of coverage, whether through self-insurance, purchased insurance, or reinsurance; (3) the amount of risk to be retained by the JIF on a self-insured basis; (4) the assumptions and methodology used to calculate policy and claims reserves; (5) the proposed method of assessing contributions; and (6) a description of initial and renewal assessment methodology including rating methodologies and all actuarial principles, assumptions and methods of calculations in sufficient detail to enable the Commissioner to determine that the assessments are appropriate. See N.J.A.C. 11:15-3.6(d).

The Department believes that these requirements should enable the Commissioner to ensure that the JIF is operating pursuant to sound actuarial principles and is financially sound, thereby helping to ensure that the JIF will be in a position to satisfy its financial obligations to claimants and other persons. Moreover, the Department notes that the Commissioner maintains a greater oversight role with respect to the operations of JIFs than he or she generally maintains with respect to operations of insurers.

Finally, the Department notes that, although it does not believe that additional information is reasonable or necessary for the reasons set forth above, the changes suggested by the commenter could not be made upon adoption as they would impose new requirements which, in turn, requires that interested parties be given notice and opportunity to comment.

For the foregoing reasons, the Department believes that the existing requirements are reasonable and appropriate. The rules provide an appropriate regulatory framework by which the Department may ensure that JIFs providing group health and term life benefits are operating in compliance with N.J.S.A. 40A:10-36 et seq., and by which it may assess the financial condition and viability of these JIFs, thus lessening the likelihood of JIF insolvencies.

COMMENT: One commenter stated that the proposed rules should require a JIF administrator to continue performing its agreed functions during claims run out and during any disputes among the administrator, servicing organization, the JIF or its participants. The commenter believes that this protection should be provided because without it local units may be unable to handle claims if the relationship with the administrator becomes "strained." The protection provided by such an amendment would be similar to unfair claims settlement practices protection and is within the Commissioner's authority to regulate the operations of JIFs pursuant to N.J.S.A. 40A:10-36 et seq.

RESPONSE: The Department disagrees. The Department initially notes that the rules at N.J.A.C. 11:15-3.26(c) require that contracts with a servicing organization or program manager provide that the servicing organization or program manager handle to their conclusion all claims and obligations incurred during the contract period. The servicing organization or program manager are entities with which the JIF contracts to provide various services, including claims administration. Accordingly, the Department believes that the rules as proposed address the concerns expressed by the commenter and that further revision is unnecessary.

Moreover, the Department believes that the change as suggested by the commenter would be contrary to the general principles and practices expressed through these rules. Essentially, to the extent that an administrator has proven unsatisfactory or is unable to perform his or her duties, a JIF should not be required to retain that administrator. The Department also notes that JIFs are required to comply with the laws and rules governing unfair claims settlement practices, N.J.S.A. 17B:30-13.1 and 17B:30-13.2, and N.J.A.C. 11:2-17, with respect to their claims handling procedures. See N.J.A.C. 11:15-3.6(e)16.

Finally, as noted in the response to the previous comment, the changes suggested by the commenter could not be made upon adoption in any case as it would impose a new requirement for which interested parties must be provided notice and an opportunity to comment. Accordingly, the Department believes that no change is required.

Summary of Agency-Initiated Change:

N.J.A.C. 11:15-3.13(b) is revised to clarify that the specified uses of a contingency account established pursuant to that section shall be consistent with the uses for which a contingency account may be established pursuant to N.J.A.C. 11:15-3.13(b)2.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 3. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENTAL UNITS PROVIDING GROUP HEALTH AND TERM LIFE BENEFITS

11:15-3.1 Purpose and scope

(a) This subchapter sets forth the requirements for the establishment, operation, oversight, modification and dissolution of joint insurance funds formed by two or more local units for the purpose of providing contributory or non-contributory group health insurance or group term life insurance, or both, to employees or their dependents, and to any other person eligible for coverage by a member local unit pursuant to N.J.S.A. 40A:10-36 et seq.

(b) This subchapter shall apply to all local units seeking to form a joint insurance fund for the purpose of providing contributory and non-contributory group health or group term life insurance and all joint insurance funds formed for such purpose pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter.

(c) No local unit of government shall join together with any other local unit or units to act as a joint insurance fund for the purpose of providing contributory or non-contributory group health or group term life insurance except as authorized by the Commissioner in accordance with the provisions of N.J.S.A. 40A:10-36 et seq. and this subchapter.

11:15-3.2 Definitions

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

"Actuary" in the case of health insurance means a fellow in good standing of the Society of Actuaries or the Casualty Actuarial Society with at least three years recent experience in health insurance pricing and reserving; "actuary" in the case of life insurance means a fellow in good standing of the Society of Actuaries with at least three years recent experience in life insurance pricing and reserving.

"Administrator" means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners or executive committee, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund commissioners or executive committee and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency, an employee of a fund member or an independent contractor.

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"Chairman" means the chairman of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

"Commissioner" means the Commissioner of the Department of Insurance.

"Department" means the Department of Insurance.

"Dependent" means dependent as defined pursuant to N.J.S.A. 40A:10-16.

"Executive committee" means the committee of insurance fund commissioners, as provided in N.J.S.A. 40A:10-36 et seq.

"Fiscal year" or "fund year" means either the calendar year January 1 through December 31, or the fiscal year July 1 through June 30, as designated in the fund's bylaws.

"Health insurance" means health insurance as defined pursuant to N.J.S.A. 17B:17-4; service benefits as provided by health service corporations, hospital service corporations or medical service corporations authorized to do business in this State, including basic health care services and/or supplemental health care services provided by health maintenance organizations; or dental care services provided by dental plan organizations and dental service corporations.

"Indemnity and trust agreement" means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to the agreement arising from their participation in the fund.

"Insolvent fund" means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after *[the effective date of this subchapter]* ***July 19, 1993***.

"Joint insurance fund" or "fund" means a group established by two or more local units of government to create an insurance fund for the purposes of providing contributory or non-contributory group health insurance or group term life insurance to their employees or dependants and to any other person eligible for coverage by a member local unit pursuant to law, approved by the Department pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter.

"Joint insurance fund commissioners" means local unit representatives chosen to represent those units in the fund, as provided in N.J.S.A. 40A:10-36 et seq.

"Lead agency" means a member of the joint insurance fund responsible for the custody and maintenance of the assets of the fund and such other duties as may be designated by the joint insurance fund commissioners. The duties performed by a lead agency may include duties that may be performed by an administrator or servicing organization.

"Life insurance" means life insurance as defined pursuant to N.J.S.A. 17B:117-3.

"Local unit of government," "local unit" or "member" means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A-25.40 and 40A:10-51) or any contracting unit as defined in N.J.S.A. 40A:11-2.

"Net current surplus" or "surplus" means the excess of the fund's unencumbered assets over its reserves and liabilities.

"Secretary" means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

"Servicing organization" or "program manager" means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund's behalf, any functions as designated by the fund commissioners including, but not limited to, actuarial services, claims administration, cost containment services, legal services, auditing services, financial services, compilation and maintenance of the fund's underwriting file, coordination and preparation of plan documents, employee booklets and other documents, risk selection and pricing, stop-loss or reinsurance producer services which include producer negotiations on behalf of the fund for stop-loss or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 40A:10-36 et seq. or this subchapter, and such other duties as designated by the fund.

"Stop-loss insurance" or "reinsurance" means insurance, purchased from an insurer authorized or admitted in the State of New Jersey, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per individual or annual aggregate basis.

11:15-3.3 Agreement to join joint insurance fund; duration

(a) Pursuant to N.J.S.A. 40A:10-36, the governing body of any local unit of government may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund as defined in this subchapter. The resolution or ordinance shall provide for execution of a written agreement specifically conditioning membership on acceptance of the fund's bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-36 et seq. The agreement shall specify the extent of the local unit's participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6) and subject to N.J.A.C. 11:15-3.10. The agreement shall also specify that the fund members have never defaulted on claims if self-insured, and, if not self-insured, have not been cancelled for non-payment of insurance premiums for a period of at least two years prior to application.

(b) Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance or resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the joint insurance fund prior to the execution of the new membership agreement.

11:15-3.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the "Local Fiscal Affairs Law" (N.J.S.A. 40A:5-1 et seq.), the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.), regulations (N.J.A.C. 5:34), and the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 17:12B-241 and 17:16I-1 et seq.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of insurance fund commissioners or executive committee, as applicable.

(c) A joint insurance fund shall be considered a local unit for purposes of the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall adopt a resolution designating its fiscal year period.

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. The resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest temporarily free balances of any claim or administrative accounts periodically as authorized by law. The custodian of funds shall possess a certified municipal finance officer certificate issued pursuant to N.J.S.A. 40A:9-140.2. The custodian shall periodically report to the fund commissioners on investment and interest income.

(f) The joint insurance fund commissioners shall annually prepare, not later than 60 days prior to the beginning of the fund's subsequent fiscal year, the proposed budget for that subsequent year. The budget shall identify the proposed items and amounts of expenditure for its operations; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status

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of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

1. A copy of the fund's proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a public hearing has been held in accordance with N.J.S.A. 40A:4-1 et seq. giving all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than the end of the fund's current fiscal year, the joint insurance fund commissioners, or the executive committee thereof, shall adopt by majority vote the budget for the fund's operations for the subsequent fiscal year.

3. A copy of each adopted budget shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption.

4. An adopted budget may be amended by majority vote of the membership of the joint insurance fund commissioners, or executive committee thereof.

5. A copy of any amendment to a fund budget shall be filed quarterly with the governing body of each participating local unit.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(g) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and, except as provided at N.J.A.C. 11:15-3.21(e), shall be retained by the fund administrator or program manager at the discretion of the fund commissioners. All books, records, files and documents of the fund shall be retained for not less than five years.

(h) Each fund shall maintain written minutes of its meetings and shall make the minutes available to the Commissioner upon request.

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. The reports shall be made at least quarterly and may be made more frequently at the discretion of the joint insurance fund commissioners and shall include, but not be limited to, the minutes, the administrator's report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the fund commissioners. The Department may require that the reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. The reports shall also be made available to the Department for review during any examination of the joint insurance fund.

(j) All officers, employees and agents, including the administrator, servicing organization and program manager of the joint insurance fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment.

(k) A joint insurance fund may utilize the services of a member to serve as lead agency for the fund.

1. A lead agency may be compensated for its reasonable expenses incurred in administering the affairs of a joint insurance fund. Any administrative costs agreed upon to be paid to a lead agency shall be received by it as a Miscellaneous Revenue and be available for expenditure through the budget appropriation method.

2. A lead agency shall not advance funds of its own to cover a purchase on behalf of the fund or the other participating units.

(l) Each fund shall cover a minimum of 1,000 employees in a self-funded health care plan providing hospital, surgical and medical benefits. A fund may cover less than 1,000 employees with the approval of the Commissioner if he or she determines that the proposed risk retention is actuarially sound in relationship to the projected employee participation.

11:15-3.5 Bylaws and plan of risk management; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioners of Insurance and Community Affairs, as provided in N.J.S.A. 40A:10-41, its bylaws and plan of risk management and any subsequent amendments thereto. In addition, the initial filing shall be accompanied by the information and documentation specified at N.J.A.C. 11:15-3.6(c) and such other information the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-3.6. The loose-leaf sheets used shall be eight and one-half inches wide and 11 inches long and punched for two-ring and three-ring binders, as appropriate. The fund shall submit seven copies of a filing in the format set forth herein. All information shall be submitted completely and accurately.

1. All filings and accompanying documents shall be submitted to the Department and the Department of Community Affairs.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-3.6 shall constitute the fund's bylaws and plan of risk management for purposes of N.J.S.A. 40A:10-41. In order to facilitate the filing and review process, the review of a filing shall be separated into two stages. The information set forth in N.J.A.C. 11:15-3.6(a) through (d) constitutes the initial stage. Within 90 days of the Commissioner's acceptance of the initial information filed, the fund shall complete the filing process by submitting the information set forth in N.J.A.C. 11:15-3.6(e). Failure to file the required subsequent information within 90 days may result in the disapproval of the fund's filing. No joint insurance fund shall begin providing insurance coverage to its member units until its bylaws and plan of risk management and other information required pursuant to N.J.A.C. 11:15-3.6 have been approved by the Commissioner.

(c) No amendment to a fund's bylaws or plan of risk management, or change in the information or documentation required to accompany the filing of the fund's bylaws of plan of risk management as provided in (a) above, shall take effect until the amendment or change is approved by the Commissioner and the Commissioner of the Department of Community Affairs.

(d) The bylaws and plan of risk management and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the plan of risk management shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(e) In addition to the information set forth in N.J.A.C. 11:15-3.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions; as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(f) All information required to be submitted shall be sent to the Department at:

New Jersey Department of Insurance
Division of Financial Examinations
Attn. Municipal Health JIF Admissions
20 West State Street
CN-325
Trenton, NJ 08625

11:15-3.6 Bylaws and plan of risk management; contents

(a) The prospective commissioners of a joint insurance fund shall prepare and, after the approval by resolution of the governing body

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of each participating local governmental unit, adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to:

1. Procedures for the organization and administration of the joint insurance fund, the insurance fund commission and alternate commissioners and, if appropriate, the executive committee of the fund and alternates. The procedures may include the designation of one member local unit to serve as the lead agency;

2. Procedures for the assessment of members for their contributions to the fund and for the collection of contributions in default;

3. Procedures for the establishment, maintenance and administration of appropriate reserves in accordance with sound actuarial principles, including the assumptions and methodology to be used for the calculation of policy and claim reserves;

4. Procedures for the purchase of direct insurance, or reinsurance, if any;

5. Contingency plans for paying losses in the event that the fund is exhausted, including provision for supplemental assessments as provided at N.J.A.C. 11:15-3.16;

6. Procedures governing loss adjustment and legal fees;

7. Procedures and admissions criteria for the joining of the fund by a non-member local unit;

8. Procedures in compliance with N.J.A.C. 11:15-3.10 for the withdrawal from the fund by a local unit;

9. Procedures for the expulsion of a member local unit;

10. Procedures for the termination and liquidation of the joint insurance fund and the payment of its outstanding obligations; and

11. Procedures governing trust fund accounts, including transfers, withdrawals and distribution of surplus therefrom and supplemental assessments.

(b) In addition, the bylaws shall:

1. Include the fund's name;

2. Provide that upon each fiscal year renewal of the fund, coverages and benefit levels as may be determined and specified by the fund and its members; provided the affected persons receive written notice of any changes in coverage or benefit levels at least 30 days prior to taking effect and that a copy of the written notice and the relevant rate changes shall be filed with the Department 30 days prior to taking effect;

3. Specify the subrogation rights of the fund;

4. Describe the responsibilities and obligations of the participants, the terms and conditions of continued participation and discontinuance of participation in the fund;

5. Be accompanied by a sample copy of the resolution or ordinance and written agreement adopted by each participating local unit as specified at N.J.A.C. 11:15-3.3. Within 30 days of approval, the fund shall send certified copies of the resolution or ordinance and written agreement from each participant to the Commissioner and the Department of Community Affairs;

6. Be accompanied by a sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-3.2, and in a form satisfactory to the Commissioner.

i. The agreement shall create a trust and govern the operation thereof under which monies shall be held by the fund commissioners as fiduciaries for the benefit of fund claimants.

ii. Where the fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified below, the agreement shall require and provide for the establishment of separate trust accounts for each of the following from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and stop-loss insurance or reinsurance premiums for each risk or liability:

(1) Employer contributions to group health insurance;

(2) Employee contributions to contributory group health insurance;

(3) Employer contributions to group term life insurance;

(4) Employee contributions to contributory group term life insurance;

(5) Employer contributions to contingency accounts;

(6) Employee contributions to contingency accounts; and

(7) Other trust accounts as required by the Commissioner.

iii. Notwithstanding (b)6ii above to the contrary, a fund shall not be required to establish separate trust accounts for employee contributions, provided the fund provides a plan in its bylaws as required by (b)7 below which provides for the recording and accounting of the employee contributions of each member.

iv. Within 30 days of approval, the fund shall send certified copies of the indemnity and trust agreement from each participant to the Commissioner and the Department of Community Affairs;

7. If applicable pursuant to (b)6iii above, be accompanied by a plan which provides for the recording and accounting of the employee contributions of each member, including, but not limited to, the collection and distribution of such employee contributions;

8. Be accompanied by a copy of a resolution or ordinance of intent to form the fund from at least two local units;

9. Be accompanied by a feasibility study which shall include, but not be limited to:

i. The proposed date that the fund intends to begin providing coverage;

ii. The proposed location of the fund's principal office;

iii. The name and address of the fund's prospective charter members;

iv. The pro forma budget and assessments for the fund's first fiscal year;

v. A certification by an actuary that the pro forma budget is actuarially sound; and

vi. The minimum number of employees to be covered before the fund begins to provide coverage. Funds providing health or life insurance on a self-insured basis shall have membership resolutions from local units representing at least 1,000 covered employees before beginning to provide coverage; and

10. Be accompanied by a non-refundable filing fee in the amount of $1,500.

(c) Each joint insurance fund shall, concurrently with the filing of its bylaws as provided in (a) above, file its plan of risk management and any amendments thereto with the Department as provided in N.J.S.A. 40A:10-41 containing the information as specified in (d) below.

(d) The commissioners shall prepare, or cause to be prepared, a plan of risk management for the joint insurance fund. The plan description shall include, but not be limited to:

1. The lines of coverage to be provided and the minimum participation required of any member which, for the initial fiscal year of the fund, shall be the coverages and benefit levels of the member local units immediately prior to joining the fund unless changes in the coverages or benefit levels are approved by the Commissioner pursuant to N.J.A.C. 11:15-3.7;

2. The limits of coverage, whether self-insurance, insurance purchased from an insurer, or reinsurance;

3. The amount of risk to be retained by the fund on a self insured basis, which for group term life insurance shall not exceed a face amount of $5,000 per covered employee;

4. The assumptions and methodology to be used to calculate the policy and claims reserves;

5. The proposed method of assessing contributions to be paid by each member of the fund;

6. Coverage to be purchased from an insurer if any;

7. Reinsurance to be purchased, if any, and the amount of premium therefor;

8. The initial and renewal assessment methodologies, including rating methodologies, for the plan and individual members including actuarial principles, assumptions and methods of calculations in sufficient detail to enable the Commissioner to determine that the charges are not excessive, inadequate or unfairly discriminatory;

9. The rating periods for initial members and for members joining the fund during the fund's fiscal year;

10. The adjusted assessments and the underlying factors considered in the development of the adjusted rates, if the rates for members joining the fund during the fund's fiscal year are to be adjusted;

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11. Provision of preferred provider, managed care and health maintenance organization networks and copies of any proposed and executed contracts or agreements for such services;

12. Procedures for open enrollment for all covered individuals not later than the first month of the fund's initial fiscal year, and annually thereafter for each subsequent fiscal year;

13. Options for the conversion of benefits, if any, and a detailed description of procedures for continuation of coverage for former employees of a member which terminates its membership in the fund;

14. The disclosure of all benefit limits for all covered benefits in plan booklets, certificates or other documents made available to covered participants;

15. The participation rules when all or part of the premium is to be derived from funds contributed by covered employees;

16. Retirees coverage including the assessment and rating plan for such coverage;

17. The limits of coverage for newborn or adopted children, which shall be automatic from birth or adoption for 31 days and which may include an additional assessment for coverage beyond 31 days;

18. Provision for plan documents, benefit plan booklets and specimens of such which must contain at least the following information and be provided to all fund participants within 30 days of membership or renewal:

i. General information, including the following:

(1) Enrollment procedures and eligibility;

(2) Dependent eligibility;

(3) The time coverage begins;

(4) Timeframes within which coverage may be changed;

(5) The time coverage ends;

(6) Provisions for continuation of coverage;

(7) Conversion privileges; and

(8) The forms and instructions for enrollment;

ii. A description of benefits, including the following:

(1) Definitions;

(2) A description of each benefit, including the following:

(A) Eligible services and supplies;

(B) Deductibles and co-payments; and

(C) Examples of the above as needed; and

(3) Exclusions;

iii. Claim procedures, including the following:

(1) Submission of claims;

(2) Proof of loss;

(3) Complaint and appeal procedures; and

iv. Cost containment programs, including the following:

(1) Pre-admission programs;

(2) Second surgical opinion programs;

(3) Other cost containment programs; and

(4) Application and level of employee penalties (if any);

19. A summary statement which describes the benefits currently provided to covered employees by each prospective member of the fund, and the benefits proposed to be provided by the fund;

20. The procedures for the closure of fund years including the maintenance of all relevant accounting records; and

21. The maximum amount a certifying and approving officer may approve for payment pursuant to N.J.A.C. 11:15-3.21.

(e) The Commissioner shall notify the fund in writing whether the initial information submitted pursuant to (a) through (d) above meets the requirements of N.J.S.A. 40A:10-36 et seq. and this subchapter and whether the initial information has been accepted. If the Commissioner does not reject the initial information within 30 working days, the initial information shall be deemed accepted. Within 90 calendar days of the Commissioner's acceptance of the information submitted pursuant to (a), (b), (c) and (d) above, the fund shall complete the application process by submitting the following additional information and documentation:

1. The location of the fund's principal office, date of organization, and name and address of each initial member;

2. Designation of the fund commissioners, executive committee, if any, chairman, secretary, administrator and custodian of the fund's assets;

3. Copies of the fund's prospective and executed agreements or contracts, and any renewal or new agreements or contracts with any administrator, servicing organization or program manager. Copies of the above shall be accompanied by a list of all parties having or deriving any interest, right or benefit in the servicing organization, program manager or administrator;

4. A cash management plan;

5. A fidelity bond for the administrator and all persons handling fund assets in a form and amount acceptable to the Commissioner;

6. A surety bond for the claims administrator or any other servicing organization deemed necessary by the Commissioner in a form and amount acceptable to the Commissioner; and a surety bond for any other servicing organization as deemed appropriate by the fund commissioners in a form and amount acceptable to the fund commissioners;

7. Errors and omissions coverage for the servicing organization, program manager, administrator, and producer who negotiates stop-loss or reinsurance on behalf of the fund;

8. A designation and appointment of an agent in New Jersey to receive service of process on behalf of the fund as well as the address in this State where the books and records of the fund will be maintained at all times;

9. A list of commissioners, officers, executive committee members, and servicing organizations, updated annually;

10. Data forms incorporating the appropriate and necessary professional qualifications for senior officers and directors of the administrator and servicing organizations providing services to the fund, updated annually;

11. Copies of each insurance and reinsurance policy purchased by the fund;

12. A pro forma financial statement based on the fund's actual membership on a form acceptable to the Commissioner showing the financial strength and liquidity of the fund to assure that all obligations will be met promptly;

13. Where self-insured, a plan for specific and aggregate stop-loss insurance or reinsurance and/or for retention in accordance with sound actuarial principles and the plan of risk management;

14. Proof of competent personnel and ample facilities within the fund organization with respect to claims administration, including a claims processing manual, underwriting matters and loss prevention, or present a contract with a servicing organization(s) for the provision of such services specifying compensation schedules and standards of performance;

15. A description of any producer arrangement plan by which producers, who shall be licensed pursuant to N.J.S.A. 17:22A-1 et seq., represent members in their dealings with the fund. The description shall include, but not be limited to, copies of all producer contracts, which shall include a description of the producers' obligations, responsibilities and compensation; the duration of such contracts; and an indication whether the contracts are subject to renewal.

i. The compensation paid to producers shall be reasonable. The Commissioner may disapprove any arrangement if he or she determines that the terms of the arrangement are unreasonable;

16. The claims handling procedure to be utilized by the fund which shall provide for the prompt, fair, equitable and confidential settlement of claims and which shall be administered in compliance with N.J.S.A. 17B:30-13.1 and 17B:30-13.2, and N.J.A.C. 11:2-17 and 11:15-3.22; and

17. The complaint handling procedure to be utilized by the fund which shall provide for the confidentiality of the claimant's identity in compliance with N.J.A.C. 11:15-3.22 and including, but not limited to, procedures for the resolution of disputed claims operated and adjudicated by an independent organization or arbitrator.

11:5-3.7 Disapproval of bylaws and plan of risk management

(a) If the Commissioner determines that the bylaws or plan of risk management of the fund and all other information required pursuant to N.J.A.C. 11:15-3.6, or any subsequent amendments or changes thereto, do not meet the requirements of N.J.S.A. 40A:10-36 et seq., or this subchapter, the Commissioner shall disapprove the bylaws or plan of risk management and issue a written order containing the specific reasons for disapproval, and the requirements to be

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met before approval may be granted. Upon the receipt of the notice of disapproval, the commissioners of the affected joint insurance fund may request an informal Departmental public hearing. The public hearing shall be convened by the Commissioner in a timely manner.

(b) If, after submission of all of the information set forth in N.J.A.C. 11:15-3.6, the bylaws and plan of risk management containing all of the information required by N.J.A.C. 11:15-3.6 are not disapproved by the Commissioner within 30 working days of receipt of the supplemental information set forth in N.J.A.C. 11:15-3.6(e), the bylaws and plan shall be deemed approved, pursuant to N.J.S.A. 40A:10-41c.

11:15-3.8 Suspension, termination, assumption of control, or other action by Commissioner

(a) After notice and opportunity for a hearing, the Commissioner may suspend or terminate the authority of any joint insurance fund, or direct or take any action deemed necessary for good cause, to enable a fund to meet its obligations, cover its expected losses, or to liquidate, rehabilitate or otherwise modify its affairs if a fund:

1. Is found to be insolvent or has experienced a deterioration in financial condition to the extent that it causes an adverse effect upon the ability of the fund to pay expected losses;

2. Fails to pay any fee or assessment; or

3. Fails to comply with any of the provisions of N.J.S.A. 40A:10-36 et seq. or this subchapter, or with any lawful order of the Commissioner within the time prescribed.

(b) In addition, the Commissioner may terminate or suspend a fund's authority if, after notice and opportunity for a hearing, he or she finds that:

1. There was a material misrepresentation or omission in any of the information supplied to the Commissioner or the Commissioner of the Department of Community Affairs;

2. The fund, or any of its commissioners or its administrator, has otherwise shown itself to be untrustworthy or incompetent; or

3. The fund, its commissioners or its administrator have misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member or a person otherwise entitled thereto and that have been entrusted to the fund, its commissioners, or its administrator in their fiduciary capacities.

11:15-3.9 Approval of non-member local units

(a) Prospective new members of the fund shall submit an application for membership to the fund's commission, or executive committee, as applicable, on a form acceptable to the Commissioner. The application shall include a copy of the resolution of participation and executed indemnity and trust agreement. The commission or executive committee may approve or disapprove the application for additional members, pursuant to the admissions criteria and bylaws of the fund.

(b) Any application approved by the fund shall be concurrently filed with the Department and the Department of Community Affairs and shall be accompanied by a revised budget with assessment detail, the name of the new member's insurance fund commissioners and alternates in accordance with N.J.A.C. 11:15-3.6(e), amendments to the fund's bylaws and plan of risk management as may be necessary, and any other information the Commissioner may deem necessary.

(c) No new membership in the fund shall become effective until the application and accompanying amendments to the fund's bylaws and plan of risk management are approved by the Commissioner and the Commissioner of the Department of Community Affairs.

(d) If a non-member local unit is not approved for membership, the fund shall set forth in writing the reasons for disapproval and send the reasons for disapproval to the non-member local unit. The fund shall retain a copy of all disapprovals for five years.

11:15-3.10 Termination and/or withdrawal of fund members

(a) A member of the fund may remain a member for the full term of membership, as provided in the fund's bylaws, unless terminated by the fund for nonpayment of assessments, noncompliance with risk management or underwriting standards, or for other reasons subject to the prior approval by the Commissioner as reasons for termination. However, a member shall not be deemed terminated for any reason until:

1. After 10 days written notice of the intention to terminate the member has been given by the fund to the member, which notice shall state the reasons for termination and shall be given by registered mail;

2. Like notice shall have been filed with the Department and the Department of Community Affairs, together with a certified statement that the notice provided for by (a)1 above has been given; and

3. Ten days have elapsed after the filing required by (a)2 above has been made.

(b) A member of the fund that does not desire to continue as a member after the expiration of its membership term, as provided in the fund's bylaws, must give written notice of its intent to withdraw 90 days before expiration of the term period. The fund shall immediately notify the Department and the Department of Community Affairs of all members that have given notice of withdrawal from the fund.

(c) A member of the fund that did not approve any amendment to the fund bylaws approved pursuant to N.J.S.A. 40A:10-43, or that does not otherwise want to continue membership prior to the termination of its membership term pursuant to (b) above shall provide written notice of its intent to withdraw 90 days prior to its withdrawal.

(d) A member that has been terminated by or does not continue as a member of the fund shall nevertheless share in any surplus in the appropriate trust accounts for that fund year and remain jointly and severally liable for claims incurred by the fund and its members during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

(e) Prior to the conclusion of the fund's current fiscal year, the fund shall provide written notification to a member that has been terminated by or withdrawn from the fund, of the estimated surplus or estimated supplemental assessment for which the member may share or be liable pursuant to (d) above.

(f) The fund shall immediately notify the Department and the Department of Community Affairs if termination or withdrawal of a member causes the fund to fail to meet any of the requirements of N.J.S.A. 40A:10-36 et seq. or this subchapter. Within 15 days of the notice, the fund shall advise the Department and the Department of Community Affairs of its plan to bring the fund into compliance.

11:15-3.11 Insolvency and/or bankruptcy of fund members

The insolvency or bankruptcy of a member does not relieve the fund or any other member of joint and several liability for the payment of any liability incurred by the member during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

11:15-3.12 Voluntary dissolution of a fund

(a) A fund may not voluntarily dissolve, or otherwise cease to do business and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the fund's members must have voted in favor of a resolution to dissolve the fund, pursuant to the written plan contained in the fund's bylaws, at a meeting duly called for such purposes;

2. The plan of dissolution must provide for the payment of all incurred losses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the fund or the trust fund accounts may be used for any other purpose;

3. The plan of dissolution shall contain a statement of the fund's current financial condition computed on a statutory basis and computed according to generally accepted accounting principles as attested to by an independent certified public accountant; and

4. The plan of dissolution, and such other information as may be required, must be filed with and approved in writing by the Commissioner and the Commissioner of the Department of Community Affairs.

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11:15-3.13 Establishment of trust fund accounts; transfers or withdrawals prohibited

(a) Pursuant to the terms of the indemnity and trust agreement, each fund shall establish a separate trust fund account in accordance with N.J.A.C. 11:15-3.6(b)6 from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and stop-loss insurance or reinsurance premiums retained jointly on a self-insured basis. The accounts shall be designated as claims or loss retention fund accounts.

1. Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no withdrawals may be affected for a claim or loss retention fund without prior written approval of the Commissioner.

(b) A fund may establish by resolution a separate trust fund account for contingencies and may include as a part of its budget an assessment for this account. The resolution shall provide a formula for the equitable assessment of members for the account, specify the uses of the contingency account ***consistent with (b)2 below***, and provide a formula for the equitable distribution and return of contingency funds to terminated or withdrawing members in accordance with the procedures and time frames of N.J.A.C. 11:15-3.20. Pursuant to N.J.A.C. 11:15-3.6(b)6 and 7, the fund shall maintain a separate contingency account for employer contributions and employee contributions for contributory or non-contributory group health insurance and term life insurance.

1. In any one year an assessment, transfer of surplus or any combination of assessments for and transfers to a contingency account shall not exceed 2.5 percent of the fund's current fiscal year earned income. The contingency accounts of a fund shall not exceed 10 percent of the fund's current fiscal year income. The annual and aggregate limitations on the amount of the contingency account set forth herein may be increased with the prior approval of the Commissioner.

2. By resolution, a fund may transfer funds from a contingency trust fund account to a claims or loss retention trust fund account to pay claims, allocated claim expenses, and reinsurance and stop-loss premiums in a fund year which has an inadequate cash balance. The transaction shall be accounted for as a permanent transfer, and the fund shall notify the Department within 30 days of any such transfers.

3. A fund shall not transfer funds to a claims or loss retention trust fund account from a contingency trust fund account if the transfer would result in a statutory deficit in the contingency trust fund account.

4. If a fund utilizes an amount equal to 2.5 percent or more of its current fiscal year income from a contingency account during a fiscal year, the joint insurance fund commissioners shall, within 10 days of such utilization, submit to the Commissioner and the Commissioner of the Department of Community Affairs a report on the causes of the utilization and the steps taken to prevent a recurrence of such circumstances.

5. The fund shall maintain accounting records on contingency accounts by fund year which shall include:

i. The sources of contributions to the contingency account;

ii. Transfers from the account to a claims or loss retention trust fund account by fund year;

iii. Interest earned, which shall be allocated by the average balance in the contingency account by fund year; and

iv. The pro-rata share of each participating member local unit allocable to each member.

11:15-3.14 Administrative account

Each fund shall establish an administrative account which shall be utilized for payment of the fund's general operating expenses, cost containment activities, data processing services and general legal expenses.

11:15-3.15 Assessments

(a) Each participating member of a joint insurance fund shall appropriate and pay to the fund its assessments as required by the joint insurance fund. Assessments for contributory or non-contributory group health insurance and term life insurance may be paid in monthly installments.

(b) Each member's assessment shall consist of an amount allocated for the administrative account, contingency trust fund account when appropriate, plus a specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the fund and in which the member participates.

(c) The total amount of each member's assessments to the joint insurance fund shall be certified by the joint insurance fund commissioners to the governing body of each participant at least one month prior to the next fiscal quarter. As a condition of continued participation in the joint insurance fund, each member shall pay the amount certified at the time and in the manner provided in the fund's bylaws.

(d) Nothing contained in this section shall preclude the assessment and payment of supplemental assessments as provided in N.J.A.C. 11:15-3.16.

11:15-3.16 Supplemental assessments

(a) Each fund shall levy upon its members an additional assessment whenever needed or so ordered by the Commissioner, to supplement the fund's claim or loss retention accounts or administrative accounts to assure payment of the fund's obligations.

1. The fund shall assess each participating member an additional proportionate amount, as provided in the fund's bylaws and plan of risk management or as directed by the Commissioner, to replenish claims or loss retention or administrative accounts.

(b) The joint insurance fund commissioners shall submit to the Commissioner and the Commissioner of the Department of Community Affairs a report of the causes of the fund's or any account's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

(c) The members shall provide the additional assessments in accordance with the provisions of the Local Budget Law (N.J.S.A. 40A:4-1 et seq.), or Local Authorities Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.), as applicable.

11:15-3.17 Failure or refusal to provide required assessments

Should any member of a joint insurance fund fail or refuse to pay as directed its assessment(s) to the fund or to pay as directed any supplemental assessment(s), or should the joint insurance fund commissioners fail to assess funds required to meet the obligations of the fund, the chairman of the joint insurance fund commission or in the event of his or her failure to do so, the custodian of the fund's assets, shall notify in writing the Commissioner and the Commissioner of the Department of Community Affairs.

11:15-3.18 Certification of funds

Prior to any commitment or agreement requiring the expenditures of funds by the joint insurance fund, the custodian of the fund's assets shall certify the availability of sufficient unencumbered funds in the account to fully pay all charges or commitments to be accepted.

11:15-3.19 Investments; application of investment income

(a) The free balance of any account maintained by a joint insurance fund, whether for administrative, contingency or claims or loss purposes, shall be invested to obtain the maximum interest return practicable. All investments shall be in accordance with the fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b.

(b) The investment and interest income earned by the investment of the assets of each claim or loss retention fund account shall be credited to each account by fund year.

(c) The investment and interest income earned by investment of the assets of the administrative and contingency accounts shall be credited to each such account.

(d) With the prior approval of the Commissioner and the Commissioner of the Department of Community Affairs, a joint insurance

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fund may join together with other joint insurance funds to implement a joint investment and cash management program, as permitted pursuant to N.J.S.A. 40:8A-3.

11:15-3.20 Refunds

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary or in excess of the limits established for a contingency fund pursuant to N.J.A.C. 11:15-3.13(b) as certified by an actuary shall be declared to be refundable by the fund not later than *[90]* ***180*** days after the end of the fiscal year***, unless otherwise extended by the Commissioner for good cause shown***. A refund of at least 50 percent of the amount declared to be refundable shall be made not later than *[120]* ***210*** days after the end of the fiscal year***, or 30 days after the end of any period of extension period granted by the Commissioner for the determination of amounts refundable, whichever is later***. A refund of any remaining amounts shall not be made later than *[180]* ***270*** days after the end of the fiscal year***, or 90 days after the end of any extension period granted by the Commissioner for the determination of amounts refundable, whichever is later***.

(b) A refund for any fiscal year shall be paid only in proportion to the member's participation in the fund for the fiscal year. Payment of a refund on a previous year shall not be contingent on the member's continued membership in the fund after that year.

(c) At the option of the member, the refund may be retained by the fund and applied toward the member's next assessment payment.

(d) The commissioners or executive committee may appropriate a portion of any refund to the appropriate contingency account subject to the provisions of N.J.A.C. 11:15-3.13(b).

11:15-3.21 Disbursements and/or payment of claims

(a) All disbursements, payments of claims settlements or other expenditure of funds of the joint insurance fund whether for administrative expenses or for claims purposes must be approved by a majority of the joint insurance fund commissioners or the executive committee thereof, unless approved pursuant to (b) below.

(b) To allow the expeditious resolution of certain claims, the fund commissioners may designate the fund's administrator or servicing organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The certifying and approving officer may be authorized by the fund commissioners to approve for payment any or specified types of claims not to exceed an amount approved by the Commissioner in the plan of risk management. The designation of the certifying and approving officer may be conditioned or restricted by the fund commissioners to require prior consultation, limitation as to the types or total amount of claims or payments which may be approved, or other procedures or restrictions as the fund commissioners may deem appropriate. The authority of the certifying and approving officer may be revoked at any time by the fund commissioners.

1. Upon approval, the certifying and approving officer shall certify the amount and particulars of the approved claims to the official having custody of the fund's assets, directing that a check for payment be prepared.

2. The certifying and approving officer shall prepare a report of all claims approved by him or her since the last report, detailing the nature and amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be submitted to the fund commissioners at their next scheduled meeting. The fund commissioners shall review and approve the actions of the certifying and approving officer. In the event a claim approved and paid by the certifying and approving officer is not approved by the fund commissioners, they shall direct appropriate action to be taken.

(c) All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and must carry the certification of some officer or duly designated agent or employee of the fund having knowledge of the facts that the goods have been received by, or the services rendered to the fund. In the case of claims or losses to be charged against any loss fund, the fund's claims administrator, if there is one, shall certify the claim's correctness and validity.

(d) All claims shall be paid by check. The check shall be signed by two persons so designated by the fund commissioners.

(e) All claims and other disbursements approved for payments by the fund commissioners or the certifying and approving officer shall be recorded in a claims register maintained by the custodian of the fund's assets.

11:15-3.22 Confidentiality of claims

(a) Employee claims information is privileged and confidential and shall not be included as a part of any open public record.

(b) Fund commissioners and the officials of the member shall not have access to any employee claim information which reveals the identity of any individual plan participant.

(c) All claims are to be filed, and all inquiries are to be handled, directly by the designated claims' administrator. All employees of the administrator shall execute a non-disclosure statement to protect the identity of the plan participants.

(d) Only executive committee members and necessary fund professionals shall participate in any closed session discussion of claims. These claims discussions, whether general or specific to a coverage dispute, shall at all times be confidential and anonymous so that the identity of the municipality and claimant cannot be ascertained. The anonymity of the claimant shall be accomplished by assigning a blind claim number and deleting all references to the individual's name and place of employment. Only the claimant may demand, by written notice, that the matter be handled with disclosure of his identity.

(e) Documents identifying the employee, or from which the employee's identity might be deduced, shall not be accessible to any persons other than the administrator, program manager, fund attorney, or appointed claim auditors when such records are needed to verify the accuracy of claim data as part of an audit.

(f) Any person having access to claim information must sign a written non-disclosure statement.

11:15-3.23 Stop-loss insurance and/or reinsurance

(a) Each fund providing primary or underlying coverage on a self-insured basis shall secure stop-loss insurance or reinsurance in a form and amount acceptable to the Commissioner from an insurer authorized or admitted in the State.

(b) Certificates of stop-loss insurance and/or reinsurance showing policy limits and other information shall be available for the inspection of each member and shall be filed with the Commissioner.

(c) Losses in excess of the established self-insurance retention amount shall be borne by the stop-loss carrier(s) according to the terms and conditions of the stop-loss contract(s).

(d) Any proposed change in the terms or limits of stop-loss insurance and/or reinsurance shall be submitted to the Department and the Department of Community Affairs for approval at least 30 days prior to the effective date of the proposed change.

11:15-3.24 Financial statement and reports

(a) A sworn annual report in a form prescribed by the Commissioner shall be prepared by each fund, filed concurrently with the Department and Department of Community Affairs and made available to each fund member not later than 120 days after the end of the immediately preceding fiscal year. The report shall include:

1. An annual audited statement of the financial condition of the fund prepared by an independent certified public accountant or registered municipal accountant and performed in accordance with generally accepted accounting principles and N.J.S.A. 40A:10-46, which shall include a statement of the organization of the fund, including its balance sheet and receipts and disbursements for the preceding year;

2. Reports of outstanding liabilities by line of coverage showing the number of claims, amounts paid to date and current reserves for losses, claims and unearned assessments as certified by a qualified actuary;

3. Reports of all incurred but not reported liabilities certified by a qualified actuary;

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4. Any material changes in information from that previously submitted;

5. The number of covered individuals by line of coverage; and

6. Such other information, as may be requested by the Department from a particular fund.

(b) In addition to the reports required pursuant to (a) above, for the initial two fiscal years of a fund, a fund shall file quarterly unaudited statements of the financial condition of the fund in a form prescribed by the Commissioner concurrently with the Department and the Department of Community Affairs within 45 calendar days after the end of each calendar quarter. After the initial two years, a fund shall file semiannual unaudited statements of the financial condition of the fund in a form prescribed by the Commissioner, concurrently with the Department and the Department of Community Affairs within 45 calendar days after the end of each six month period. All statements filed pursuant to this subsection shall include the information set forth in (a) above, except that certification by a certified public accountant, registered municipal accountant or a qualified actuary shall not be required.

11:15-3.25 Examination of funds possibly in financial condition detrimental to the public

(a) The Commissioner may conduct an examination of any fund as he or she deems necessary, or at any time the Commissioner has reasonable cause to believe the fund may be insolvent or in a financial condition detrimental to its members or to the public. It shall be the duty of the fund members, commissioners or executive committee to notify the Commissioner of any information indicating that any fund may be insolvent or in a financial condition detrimental to the fund's members or the public.

(b) The fund members, commissioners or executive committee may, upon majority vote, request that the Commissioner order an examination of any fund member which the fund, commissioners or executive committee, if any, in good faith believes may be in a financial condition detrimental to other fund members or to the public.

(c) Any examination made pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter shall be conducted in a manner satisfactory to the Commissioner and by such persons as the Commissioner designates. The cost of any examination shall be borne by the fund.

11:15-3.26 Servicing organizations; administrator

(a) Except with the approval of the Commissioner, no servicing organization or program manager of a fund, or producer appointed by a fund pursuant to N.J.A.C. 11:15-3.6(e)15, or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of that fund, or be an employee, officer or director of the administrator.

(b) Except with the approval of the Commissioner, no administrator of a fund, or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a servicing organization or program manager of that fund, or the insurance producer appointed by that fund pursuant to N.J.A.C. 11:15-3.6(e)15.

(c) Each contract with a servicing organization or program manager shall include a clause stating, "Unless the Commissioner otherwise permits, the servicing organization (or program manager, as applicable) shall handle to their conclusion all claims and other obligations incurred during the ocntract period."

(d) The fund commissioners or the executive committee, if any, may designate an administrator or lead agency to carry out the policies established by the commissioners or the executive committee, if any, and to provide day-to-day management of the fund. The minutes of the commissioners or executive committee meetings, if any, shall detail the areas of authority delegated to the administrator.

(e) Any employee, officer or director of an administrator, servicing organization, program manager or insurance producer appointed pursuant to N.J.A.C. 11:15-3.6(e)15 shall disclose to the fund commissioners or executive committee, as applicable, any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization, program manager or insurance producer.

11:15-3.27 Conflict of interest

All officials or employees of a participating local unit or any members of the family of such officials or employees shall comply with N.J.S.A. 40A:9-22.1 et seq., (the "Local Government Ethics Law").

11:15-3.28 Notice and hearings

(a) The Commissioner shall give prior written notice of any proposed suspension of authority, revocation, cease and desist order, or other enforcement action to the fund commissioners, its executive committee, or member local unit as the case may be, or to any person to whom the proposed enforcement action applies specifically. The notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the fund or the person of their right to request a hearing on the proposed enforcement action. A copy of the written notice shall also be provided to the Commissioner of the Department of Community Affairs.

(b) The fund involved shall have 20 days from the mailing of the notice to request a hearing on the proposed enforcement action. Such a hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Failure to mail a request for a hearing within the time prescribed shall result in the revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled.

11:15-3.29 Orders

(a) After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, the Commissioner may issue an order requiring a person or fund to cease and desist from engaging in an act or practice found to be in violation of any provision of N.J.S.A. 40A:10-36 et seq. or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, that a fund has violated any cease and desist order, the Commissioner may revoke his or her approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, the Commissioner may issue an order requiring the joint insurance fund commissioners, or the executive committee, if any to dismiss an administrator, servicing organization or program manager or terminate the contract of an administrator, servicing organization or program manager because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by the administrator, servicing organization or program manager, or any of the employees, officers or directors thereof.

(d) A copy of any notice issued pursuant to this section shall be furnished to the Commissioner of the Department of Community Affairs.

11:15-3.30 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.

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LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF OPTOMETRISTS

Permissible Advertising

Adopted Amendments: N.J.A.C. 13:38-1.2 and 1.3
Adopted Repeal and New Rule: N.J.A.C. 13:38-2.6

Proposed: November 16, 1992 at 24 N.J.R. 4237(a).

Adopted: May 5, 1993 by the State Board of Optometrists, Barry Schneider, President.

Filed: June 18, 1993 as R.1993 d.357, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with a portion of the amendments to N.J.A.C. 13:38-1.2 not being adopted.**

Authority: N.J.S.A. 45:12-4 and 45:12-11.1.

Effective Date: July 19, 1993.

Expiration Date: August 27, 1995.

The Board of Optometrists afforded all interested parties an opportunity to comment on the proposed amendment, repeal and new rule regarding permissible advertising, N.J.A.C. 13:38-1.2, 1.3 and 2.5. The official comment period ended on December 16, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 16, 1992 at 24 N.J.R. 4237(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Optometric Association, the Society of Dispensing Opticians of New Jersey and to other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Optometrists, Post Office Box 45012, Newark, New Jersey, 07101.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board received 21 letters regarding the proposal. The commenters included Joseph B. Neville of Pearle Vision, Leonard Steiner, Chairman of the New Jersey Optometric Association Licensure and Regulation Committee and the following licensed Optometrists:

Leonard Strulowitz	Irving Gutstein
Stuart M. Lonsk	Sheldon G. Greenspan
Louis A. Schrager	Randolph Brooks
Errol Rummel	Stanley L. Ravine
Susan E. McMahon	Steven D. Starkman
David B. Mitchell	Richard J. Favreau
Ronald F. Luxenburg	Barbara J. Tarbell
Marni Levi	Theresa C. Fleming
Stephen A. Kowalsky	Harold Wiener
	Marc S. Wiener

Following is a summary of the comments received together with the Board's responses:

COMMENT: Two commenters stated their opposition to any and all advertising, asserting that it degrades the profession and contributes to the explosion of health care costs.

RESPONSE: Advertising is permissible under both Federal and State law. The Board's rules concerning advertising are intended to achieve a balance between the advertising professional's right to offer services and compete in the health care field with the potential patient's need to be protected from advertising claims which have the potential to be false and/or misleading.

N.J.A.C. 13:38-1.2(c)7 (The Board proposed to delete this paragraph, which prohibits an optometrist from advertising free or reduced fee eye examinations contingent upon a resultant purchase of ophthalmic goods or services.)

COMMENT: All of the commenters objected to the proposed deletion of N.J.A.C. 13:38-1.2(c)7. Some of the commenters argued that the prohibition should be retained because when such advertising was permitted in the past it led to unnecessary prescriptions. Others predicted that the incentive for the examiner to prescribe regardless of actual visual need will result in increased costs to the public. Additional arguments in opposition to deleting the prohibition were that patients who change doctors to take advantage of free exams will have inconsistent health care and patients with asymptomatic diseases will not receive needed monitoring; the Board does not have sufficient investigative staff to enforce the rule on a case-by-case basis; and the rule incorrectly implies that optometric services are worthless because eye examinations are regularly offered for free. One commenter recommended that the regulation also require (1) a statement as to the exam fee if no purchase is made; and (2) that the patient be given a copy of the prescription even though the examination is free. One commenter suggested that advertisements should offer "free screenings" and not "free exams" because only minimal services will be offered. The NJOA claimed that the Board has not provided justification for removing the prohibition. NJOA also asserted that the Board's argument that the practice is not per se deceptive is weak, pointing out that the federal and state governments have placed limitations on physician ownership of referral facilities, a practice which also is not per se deceptive. NJOA asked the following more specific questions: What is the procedure if the patient wants to take a prescription elsewhere after the free exam; what is the examination charge if the patient does not need a new prescription; how will the Board ensure a complete minimum exam is done each time when the obvious financial incentive will be to minimize time spent with each patient; does the Board intend to propose a fee increase to support enforcement efforts. Finally, NJOA notes that there is no need for the proposal because (1) optometrists are now allowed to offer free or courtesy eye exams to any patient on a case-by-case basis; and (2) opticians routinely advertise reimbursement of professional fees contingent upon a purchase, and there is no demand on the part of optometrists to be permitted to compete on similar terms.

RESPONSE: On further consideration and review of the comments, the Board has decided to retain the current prohibition against offering free examinations conditioned upon the purchase of ophthalmic goods or services. While, as noted in the Summary to the proposal, such a practice is not *per se* deceptive, the linking of a free exam to the purchase of merchandise presents an advertising and business practice which possesses a high potential for abuse and consumer mischief in that the question of whether the advertised exam is really "free" (that is, of no cost to the patient) will always arise. The unscrupulous advertiser's ability to manipulate the price of the merchandise upward from its usual and regular price (thus recapturing in part or in whole the "free" exam fee) is both difficult and time consuming to detect either by the consumer or the Board after the fact. In such a case, the patient/consumer is easily misled into the transaction by the powerful claim of a free exam and may end up paying the same or more for the combined exam plus the ophthalmic goods than what the transaction would have cost absent the "free" examination. As noted in the comments the practice may also lead to the evil of issuing unnecessary prescriptions in order to conclude sales of ophthalmic goods and to possible inconsistent optometric treatment arising from patients' responding to "free" advertising claims. Given these considerations, the Board has decided that the continuation of the existing prophylactic provision is both necessary and appropriate.

In order to make clear the right of an advertising optometrist to offer and to render free examinations which are not conditioned on the purchase of merchandise (a right which licensees have always possessed), a specific provision has been inserted. Thus, as an alternative to offering free examinations conditioned upon ophthalmic purchases, a licensee may advertise such examinations along with ophthalmic merchandise shown at the licensee's regular or specially reduced price. In such cases, of course, all minimum examination requirements must be complied with and patients must be given their prescription without charge. It should be noted that this alternative allows for an advertised package to be offered to the consumer in a clear, nondeceptive format which, if chosen by the consumer, will yield the same economic benefits to both the optometrist and the consumer. Finally, to the extent that licensees now offer examinations free of charge or opticians reimburse patients therefore, the revision is consistent with such practices.

N.J.A.C. 13:38-1.2(c)6 (The amendment to this section requires that in advertising which includes prices, the brand as well as the type of lens being offered must be included.)

COMMENT: Seven commenters expressed support for the proposed amendment to N.J.A.C. 13:38-1.2(c)6, stating use of a brand name will help prevent the "bait and switch" tactics which are common with this type of advertising and will provide the consumer with more information to be used in making comparisons.

RESPONSE: The Board agrees that this amendment is in the best interests of the consumer.

COMMENT: Two commenters suggested that because some lenses may be incompatible with the patient's condition; for example,

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keratoconus or astigmatism, the following sentence should be added: "The evaluation of an advertised contact lens need not include the actual placement of the advertised lens upon the patient's eye if in the professional judgment of the optometrist the lens would be physically or visually inappropriate."

RESPONSE: The Board does not believe it is necessary to include such a statement in advertisements. The commenter is referred to N.J.A.C. 13:38-2.3(d), which requires every optometrist to evaluate a patient for the specifically advertised brand and type of lenses.

COMMENT: In opposition to the amendment, Pearle Vision argued that requiring the listing of numerous brands in an advertisement may infringe upon First Amendment rights in that some advertising may be limited due to space and cost constraints.

RESPONSE: An advertiser offering more than one brand of lenses will be in compliance with this paragraph if the advertisement contains one lens brand as an example of those being offered at the advertised price.

COMMENT: Commenting upon the requirement that when contact lens prices are advertised the advertisement also include the examination fee, Pearle Vision stated that this cannot be accomplished in co-op advertising where licensees may share product advertising but each licensee charges a different fee. The commenter recommended amending the regulation to require the advertiser to state whether the examination fee is included in the price.

RESPONSE: This comment does not relate to the proposal at hand but rather concerns an existing regulation which was not proposed to be amended. However, the Board points out that since optometric services necessarily involve an examination, the inclusion of the examination fee in all contact lens advertising, including co-op advertising, is essential to provide the consumer with all information necessary to compare prices.

N.J.A.C. 13:38-1.2(e) (The amendment to subsection (e) permits claims of professional superiority with regard to services or merchandise if the claims can be substantiated.)

COMMENT: Of the nine individuals commenting in opposition to the amendment to N.J.A.C. 13:38-1.2(e), one individual stated (without explanation) that licensees should be permitted to advertise superiority of professional services but not superiority of merchandise. Others argued that claims of superiority are subjective and should not be allowed in any field because they encourage deceptive advertising.

RESPONSE: While the Board appreciates the commenters' concerns about the subjective nature of such advertising, it believes those concerns are adequately addressed by the requirement that statements of superiority may be made only when they can be substantiated by the licensee.

COMMENT: Several commenters stated that the proposed amendment to N.J.A.C. 13:38-1.2(e) is unenforceable because the Board will be unable to determine the qualifications of licensees who advertise professional superiority. One commenter suggested that the Board is not adequately staffed to enforce the rule.

RESPONSE: The Board, which includes several practicing optometrists among its members, is confident it will be able to determine licensee qualifications. The Board is also confident that it has sufficient investigative staff to enforce the provisions of this rule.

COMMENT: The NJOA asked for an identification of the standards against which claims of superiority of services or materials will be judged, stating there is no board or agency in eye care which can render such a substantiated verdict.

RESPONSE: It is the Board's obligation to determine the truthfulness of claims of superiority based upon current standards of practice. The Board will investigate claims of superiority on a case-by-case basis based upon documentation submitted by the licensee.

N.J.A.C. 13:38-1.2(f)1. (This new paragraph permits use of titles of post-graduate fellowships from the American Academy of Optometry and the College of Optometrists in Vision Development.)

COMMENT: Eight commenters were in favor of N.J.A.C. 13:38-1.2(f)1, which would permit the titles FAAO and FCOVD to be used, stating that licensees who have invested the time to attain these titles should be able to use them.

RESPONSE: The Board acknowledges and appreciates the commenters' responses.

COMMENT: A member of the American Academy of Optometry stated that Academy members should not be permitted to advertise because the Academy, in its original by-laws, rejects any advertising whatsoever.

RESPONSE: The Academy no longer prohibits advertising. As stated, Federal and State laws permit optometrists to advertise, and this rule provides guidelines for optometrists wishing to do so.

N.J.A.C. 13:38-1.2(f)2). (This new paragrah prohibits use of the term "specialist" but permits use of the term "practice limited to" where the licensee's practice is primarily devoted to a recognized area of optometric care.)

COMMENT: Comments were received in support of N.J.A.C. 13:38-1.2(f)2 that would prohibit the use of the term "practice limited to" include (1) that it will benefit patients because it will enable them to more easily locate the type of care for which they are looking; and (2) that it will put optometrists in the same classification as medical and dental professionals who choose to limit their practices to sub-specialties.

RESPONSE: The Board acknowledges and appreciates the commenters' responses.

COMMENT: One commenter is in favor of N.J.A.C. 13:38-1.2(f)2 only if it permits advertisement in one area of practice limitation only. Another commenter is in favor provided the licensee does not claim to be superior in those fields.

RESPONSE: Permitting advertisement of concentration in only one practice area is not practical, since an optometrist may be qualified to advertise concentration in several related areas. Licensees may claim superiority in a field or fields of concentration as long as such claims can be substantiated.

COMMENT: Noting that the proposal references "recognized" areas of optometric care, a commenter asked whether the Board considers the diagnosis, treatment and management of eye disease to be a recognized specialty for certified optometrists.

RESPONSE: A licensed optometrist who wishes to use pharmaceutical agents for treatment purposes must be certified by the Board prior to prescribing or dispensing such agents. However, prescriptive practice is not a "specialty." Specialties are not established or recognized within the profession of optometry in a fashion similar to those established in the medical profession (that is, advanced education and training leading to specialty board examination and certification.)

COMMENT: In opposition to use of the term "practice limited to," one commenter stated that, because there are no boards to certify optometrists as specialists in any area, such claims would be purely the opinion of the practitioner and could easily mislead the consumer.

RESPONSE: While the Board appreciates the commenter's concerns, the licensee must be able to substantiate claims of concentration in a recognized area of optometric care (that is, contact lens services, low vision services) upon request by the Board. A licensee found to have engaged in misleading advertising remains subject to penalty.

COMMENT: One commenter stated that the practices of many licensees are limited to contact lenses and eye examinations by contractual agreements. Therefore, the public would be deceived into thinking that these individuals had expertise and devotion to contact lens fitting when this is not so. The commenter suggested that a further explanation should be required in these cases so that the consumer is not given a false impression of expertise.

RESPONSE: The Board has received no consumer complaints in this regard and accordingly believes an additional statement is unnecessary at this time.

COMMENT: One commenter expressed the opinion that use of the term "practice limited to" is wrought with deception, predicting that such use will hurt consumers in the long run because they will not receive the expertise the ads either say or imply. Another commenter stated that the proposal may increase competition but it will not increase consumer information and will further expand the problem of deceptive and misleading advertising practices.

RESPONSE: At present, the Board has no reason to anticipate that consumers will not receive the expertise the ads imply. The Board maintains that permitting use of the term "practice limited to" will benefit the consumer by improving the quality and expanding the availability of information in advertising about an optometrist's services to better enable the consumer to make an informed choice among those offering optometric services. At the same time, the rule provides standards to guard against deceptive and misleading advertising practices.

N.J.A.C. 13:38-1.2(f)3 (This new paragraph would permit statements in regard to years of experience in a particular area of optometry.)

COMMENT: Three commenters expressed support for N.J.A.C. 13:38-1.2(f)3, including one commenter who was in support of the proposal as long as the years of experience are for an individual and not for a group or commercial entity.

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RESPONSE: The Board believes the rule will be clearly understood to apply to an individual practitioner. If such is not the case, the rule may be amended at a later date.

COMMENT: One commenter was opposed to permitting advertisement of years of experience, stating that years of experience do not always connote knowledge, ability or expertise.

RESPONSE: Although the Board cannot disagree, it believes that in most cases the number of years of professional practice will translate into more knowledge in the field. This information, in combination with the expanded advertising permitted by this rule, will provide additional helpful information to the consumer.

N.J.A.C. 13:38-1.2(k) (This new paragraph permits lay or expert testimonials.)

COMMENT: Six commenters stated their opposition to use lay or expert testimonials, stating that the Board will be unable to investigate false testimonials, that testimonials are anecdotal and are of no value to the consumer in judging quality of care, and that testimonials will mislead consumers. One commenter asked the Board to identify the benefits which will accrue to the consumer through receipt of a compensated endorsement, "except for the realization that some people will say anything for anybody if compensated enough."

RESPONSE: As stated, the Board is confident that it will be able to adequately enforce the rule. Standards with regard to who may render testimonials and the requirement that the licensee substantiate any objective, verifiable statement of fact appearing in a testimonial upon Board request will help to protect the consumer against misleading advertising. Testimonial advertising, in combination with the additional methods of advertising now permitted, will provide for better informed decision making in the consumer's choice of an optometrist. Inclusion of an additional statement indicating that the testimonial giver received compensation will aid the licensee in his or her judgment of the testimonial.

N.J.A.C. 13:38-2.5 (This new section prohibits referrals for a fee. The prohibition does not apply to the division of fees among licensees engaged in an employment, partnership or corporate relationship for the delivery of professional services.)

COMMENT: One commenter argued that the language of this section is overly restrictive and may not take into account lawful division of fees between optometrists and other health care providers (for example, physicians and dentists) in an interdisciplinary practice or in an HMO-affiliated IPA, both of which are permissible under the Professional Services Corporation Act. This commenter suggested the word "among" be replaced by the word "by" as follows:

"The within prohibition shall not prohibit the division of fees by licensees engaged in a bona fide employment, partnership or corporate relationship for the delivery of professional services."

RESPONSE: The rule is not intended to restrict any lawful division of fees as permitted by the Professional Services Corporation Act; rather, it is intended to prohibit "kickbacks." The Board believes the rule is sufficiently clear as written and that an amendment is not necessary at this time.

Summary of Agency-Initiated Changes:

1. **N.J.A.C. 13:38-1.2(c)7:** The initially proposed deletion of the prohibition against advertising and offering free or reduced fee optometric examinations conditioned upon the purchase of merchandise was not adopted. Rather, the existing provision is retained and language clarifying and articulating a licensee's right to advertise and offer free examinations not contingent upon the purchase of merchandise has been added.

2. **N.J.A.C. 13:38-1.2(e):** The term "materially" has been added to clarify the licensee's duty to substantiate claims of superiority.

3. **N.J.A.C. 13:38-1.2(k):** The term "specialized" has been deleted as a modifier of the term "expertise" to more clearly reflect the Board's intent that sufficient, and not necessarily "specialized," expertise be present to substantiate a statement or opinion requiring expertise to assure truthfulness.

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

13:38-1.2 General advertising practices

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

(c) An optometrist may advertise fees for services to be rendered and prices for ophthalmic goods and merchandise offered for sale provided that:

1.-2. (No change.)

3. A statement of a fee or price for professional services shall be set forth in a single dollar amount and shall not be stated in the form of a range of fees or prices. A statement of price relating to ophthalmic goods or merchandise may be set forth in a range provided such range is stated in terms of a minimum and maximum dollar amount;

4. Where a separate or additional fee for the service of dispensing ophthalmic goods is to be charged, the advertisement shall disclose the dollar amount of such fee;

5. Where prices are set forth for ophthalmic goods and services for eyeglasses (lenses and frames), the advertisement shall indicate the type of frames and corrective lenses being offered such as clear or tinted, single vision or multifocal, and plastic, glass or other material. The lenses and frames may be priced separately or as a combined item; and

6. When prices are set forth for ophthalmic goods and services for contact lenses, the advertisement shall include, but not be limited to, the fee for the eye exam appropriate to a contact lens evaluation, the type and brand of lens being offered, fitting instruction and follow-up care. These items may be priced separately or as a combined package. If the cost of a contact lens care kit is not indicated as a separate item or as a part of a package, the following statement shall be set forth: "The proper maintenance of contact lenses requires sterilization, storage and cleansing in special containers and solutions, the cost of which is not included in this offer." In all advertisements which include a price for a contact lens care kit, the type of kit shall be set forth. When the price of a contact lens is advertised, a statement shall be made to note that such lens may not be appropriate for all patients.

7. An optometrist may offer a free or reduced fee eye examination. An advertised offer of a free or reduced fee eye examination shall not be contingent upon a resultant purchase of ophthalmic goods or services.

(d) (No change.)

(e) An advertisement shall not state that the advertiser possesses professional superiority with regard to services or merchandise offered or with regard to apparatus, equipment or technology utilized by such advertiser unless such claims can be ***materially*** substantiated by the licensee.

(f) When an advertisement contains information on professional credentials, it shall only contain the highest academic degrees obtained relating to the practice of optometry and certifications from bona fide accrediting bodies directly related to the practice of optometry.

1. The use of titles of post-graduate professional fellowships in optometry from the American Academy of Optometry and the College of Optometrists in Vision Development shall not be deemed to be a claim of professional superiority.

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

3. Nothing in this section shall preclude any truthful and non-deceptive statement in regard to experience in a particular area of optometry (for example, 10 years experience in contact lens fitting and dispensing).

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

(j) It shall be an unlawful advertising practice for an optometrist licensed by the New Jersey Board of Optometrists to:

1. Guarantee that services rendered will result in cures of any optometric or visual abnormality;

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2. Fail to retain a copy or duplicate of any advertisement for a period of three years following the date of publication or dissemination. Such copies or tapes shall be made available on request by the Board or its designeee; or

3. Fail to be able to substantiate any objective material claim or representation set forth in an advertisement.

(k) An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter. An expert testimonial shall be rendered only by an individual possessing *[specialized]* expertise sufficient to allow the rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and the failure to do so, if required by the Board, may be deemed professional misconduct.

1. Where an advertiser directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a legible and readable manner in any advertisement in the following language or its substantial equivalent:

COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL.

2. An optometrist who advertises through the use of testimonials shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include, but not be limited to, the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation, and a signed, notarized statement and release, obtained prior to the information contained in the testimonial and indicating that person's willingness to have his or her testimonial used in the advertisement.

13:38-2.3 Records of examinations and prescriptions

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

(e) Every optometrist shall be required to evaluate a patient for the specifically advertised brand and type of contact lenses which attracted or induced the patient to seek such goods. In the event that the patient is fitted with another brand or type of contact lens, the patient record shall reflect that decision and the justification therefor.

13:38-2.5 Division of fees

It shall be professional misconduct for a licensee to pay, offer to pay, to solicit or to receive from any person any fee or other form of compensation for the referral of a patient or purchaser of goods and services. The within prohibition shall not prohibit the division of fees among licensees engaged in a bona fide employment, partnership or corporate relationship for the delivery of professional services.

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION
Toy and Bicycle Safety
Adopted New Rules: N.J.A.C. 13:45A-24

Proposed: September 8, 1992 at 24 N.J.R. 3019(b) (see also 24 N.J.R. 3666(a)).

Adopted: June 15, 1993 by Emma N. Byrne, Director, Division of Consumer Affairs.

Filed: June 28, 1993 as R.1993 d.372, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:17B-124.1, 56:8-52(b) and 39:4-14.7(a).

Effective Date: July 19, 1993.

Expiration Date: November 9, 1995.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:45A-24, relating to toy and bicycle safety. The official comment period originally ended on October 8, 1992, but was extended until November 2, 1992. Announcement of the opportunity to respond to the Division appeared in the New Jersey Register on September 8, 1992, at 24 N.J.R. 3019(b). Notice of the comment period extension appeared in the New Jersey Register on October 19, 1992, at 24 N.J.R. 3666(a). Announcements were also forwarded to the Star Ledger, the Bergen Record, the Trenton Times, the Asbury Park Press, the New York Times, the Wall Street Journal, the New Jersey Law Journal, New Jersey Lawyer, Toy and Hobby World, the Toy Manufacturers of America, the New Jersey Retail Merchants Association, the New Jersey Federation of Independent Businesses, the New Jersey Business and Industry Association, New Jersey PIRG, the Consumers League of New Jersey, the Bicycle Manufacturers Association, the New Jersey Chamber of Commerce, the Medical Society of New Jersey, the New Jersey Hospital Association, toy retailers, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Division of Consumer Affairs, P.O. Box 45027, Newark, N.J. 07101.

Summary of Public Comments and Agency Responses:

During the original and extended comment periods, the Division of Consumer Affairs received three communications regarding the proposed new rules. Comments were received from the following:

Melanie L. Willoughby, President, New Jersey Retail Merchants Association, Trenton, New Jersey

Thomas F. Shannon, Michael R. Kershow, and John E. Villafranco of Collier, Shannon, Rill and Scott, Washington, D.C., representing the Bicycle Manufacturers Association of America, Inc.

A commenter who requested that his name not be listed.

A summary of the comments received, together with the Division's responses, follows.

N.J.A.C. 13:45A-24.1(b)1

COMMENT: A commenter pointed out that "medical examiners" should be "medical directors."

RESPONSE: This error has been corrected.

N.J.A.C. 13:45A-24.2

COMMENT: The New Jersey Retail Merchants Association (NJRMA) believes that the definiton of toy in this section is not adequate. It leaves many open questions, for example, does a toy include an item such as a car seat which is not within the jurisdiction of the U.S. Consumer Product Safety Commission but rather of the jurisdiction of the National Highway Transportation Administration? Also, are items of children's clothing supposed to fall within the meaning of "toy"?

RESPONSE: The Division encourages the reporting of injuries caused or worsened by any consumer product, regardless of which Federal agency has jurisdiction over that product. For purposes of mandatory reporting by physicians, car seats are "articles designed for children" and therefore within the definition. The key factor in deciding whether an injury results from a "toy" is simply whether the item in question is marketed for use by children. Several words have been added to the definition to emphasize that fact. However, the Division does not believe that the Legislature intended to include clothing, other than costumes, as a reportable causative agent of injury.

N.J.A.C. 13:45A-24.3

COMMENT: In this section there is no definition of "toy or other article intended for use by children" although there is a definition of "toy" under proposed N.J.A.C. 13:45A-24.2 (physician reporting of toy-related injuries). It appears that each of these sections is independent of the other.

RESPONSE: That is correct. In the case of N.J.A.C. 13:45A-24.3, the determination of "toy" is governed by the applicable law or regulation of the Consumer Product Safety Commission that requires a recall notice.

COMMENT: Does the proposed rule regarding toy recall notices apply only to those types of products that are within the jurisdiction of the U.S. Consumer Product Safety Commission?

RESPONSE: No, because the statute includes toy recall notices required to be given under any law, as well as notices given voluntarily by manufacturers, distributors, or dealers. Such notices may or may not concern products within the jurisdiction of the CPSC.

COMMENT: N.J.A.C. 13:45A-24.3(c) requires a dealer to maintain a record of receipt of toy recall notices, including the date of receipt. For most national retailers, the corporate headquarters sends out its own

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recall notices to stores based on product safety information that comes to the attention of the corporate headquarters. Can we assume that any record of receipt that would have to be maintained by any national retailer's New Jersey stores is the date of receipt of the recall notice the corporate headquarters mails out?

RESPONSE: Whatever the source of the toy recall notice, the 120-day period for mandatory display begins on the date of receipt by the retail dealer. Wording has been added to the definition of "distributor" to make clear that the word refers to parent companies of national retailing chains, as well as to wholesalers and dealers who act as distributors.

COMMENT: N.J.A.C. 13:45A-24.3 is silent as to the length of time that a retailer must maintain the records and the recall notices.

RESPONSE: For the protection of the retailer, the Division believes that this material should be kept indefinitely.

COMMENT: In regard to N.J.A.C. 13:45A-24.3(d)2, NJRMA objects to having an additional sign posted "in close proximity to each cash register" to advise that there are recall notices at certain locations. For any large discount or department store to post signs at each cash register advising of the location is to require signs at over 15 cash registers. Also, there are so many notices already in stores because of various Federal and state laws and regulations that it is highly likely that, aside from sale notices, the customers will completely ignore the clutter of notices. Presently, retailers post the required signs at the entrances to their stores so that all consumers can see the recall notices as they enter. NJRMA recommends that the rules be revised to require these central posting locations.

RESPONSE: The posting requirement has been made more flexible, to accommodate the display of toy recall notices at the principal entrance of the store, in the cash register area, or at a location elsewhere that is easily accessible to consumers. In recognition of difficulties presented by the wide variety of toy retailers and the premises within which they operate, the small card requirement has been deleted.

COMMENT: The commenter reads N.J.A.C. 13:45A-24.3(b) to mandate that both the manufacturer and dealer who are required by the CPSC to give public notice of a toy defect also notify the Division of Consumer Affairs. Is that the Division's intent? If so, will the Division be inundated with duplicate toy recall notices?

RESPONSE: Any party required to give public notice under law or as the result of a CPSC order, or any party voluntarily giving such notice, must simultaneously notify the Director of the Division, in writing. Multiple notices from dealers to the Division regarding the same item are unlikely since N.J.A.C. 13:45A-24.3(b), like the statute, clearly refers only to dealers who initiate public notice of a toy defect.

N.J.A.C. 13:45A-24.4

COMMENT: The proposed regulations unnecessarily limit the means by which a retailer must communicate the helmet promotion statement. While the statute does specify that affixing the "Missing One Part" warning card will satisfy the Act, it does not state that it is the **only** means of compliance nor does it mandate some derivative of this requirement. Consistent with the broad language of the Act and the important purposes of the law, the regulations should not limit creative efforts to promote helmets, nor should the regulations impose inflexible requirements on retailers and suppliers. Other equally conspicuous and more durable options might better communicate the safety statement to consumers.

RESPONSE: The Division agrees that the legislation does not restrict the manner of communicating the helmet statement; the Division did not intend the notice described in N.J.A.C. 13:45A-24.4 to be viewed as the only possible alternative to the "Missing One Part" tag. The section has been revised for greater clarity.

COMMENT: As worded, the proposed regulations would produce the unintended result of requiring the placement of the safety statement on a tag or notice that would then be affixed to the carton of the unassembled bicycle (as opposed to printed directly on the carton itself). This section also would require the statement to appear on the carton in 20-point type, which would be considerably smaller, and therefore more obscured, than other print appearing on the carton. It is clear that the New Jersey state legislature did not intend this result. Accordingly, the regulations should be modified to set forth separately the requirements applicable to the statements for bicycles and for cartons.

RESPONSE: Additional means of affixing the helmet statement are now spelled out in the rule. These include a permanent decal affixed to the bicycle frame, as well as a prominently printed statement on the carton of a bicycle that is sold unassembled.

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 24. TOY AND BICYCLE SAFETY

13:45A-24.1 Purpose and scope

(a) The purpose of this subchapter is:

1. To implement P.L. 1991, c.250, by setting forth regulations for the reporting of toy-related deaths or injuries;

2. To implement P.L. 1991, c.295, by setting forth regulations for disseminating notice of defective or hazardous toys or other articles intended for use by children; and

3. To implement P.L. 1991, c.323, by setting forth regulations for a notice promoting the use of helmets to be affixed to bicycles sold at retail in the State of New Jersey.

(b) The sections of this subchapter shall apply as follows:

1. N.J.A.C. 13:45A-24.2 applies to all physicians, defined for purposes of this section as Doctors of Medicine, Doctors of Osteopathy, and Doctors of Podiatric Medicine who are licensed by the State Board of Medical Examiners, and Doctors of Chiropractic who are licensed by the State Board of Chiropractic Examiners; and to the medical *[examiners]* ***directors*** of all licensed health-related facilities located within the State of New Jersey, such as hospitals, public health centers, emergency and other medical treatment centers, or the premises of health maintenance organizations if patients are seen or treated therein.

2. N.J.A.C. 13:45A-24.3 applies to manufacturers, importers, and distributors of toys or other articles intended for use by children, and to all dealers who offer to sell or sell such items to consumers in the State of New Jersey.

3. N.J.A.C. 13:45A-24.4 applies to all persons in the business of selling bicycles at retail in the State of New Jersey.

13:45A-24.2 Reporting of toy-related injuries

(a) As used in this section, the following words shall have the following meanings:

"Toy" means a plaything or item primarily *[intended]* ***marketed*** for ***the*** amusement or recreation ***of children***, as well as any article that is designed for use by children, such as a stroller, crib, child-sized furniture, pacifier, teething ring, etc.

"Toy-related injury" means an injury to a person of any age caused or worsened by a toy as defined above; the term does not include an injury which involved a toy but was not directly caused by the toy or worsened by an apparent characteristic of the toy.

(b) Whenever a physician has before him or her a person whose injury or death the physician determines to be or reasonably suspects may be toy-related, the physician or designee shall, as soon as practicable but no later than the next business day, make a report as follows:

1. If the injured person was seen in a private office or non-institutional setting, the physician shall report the toy-related injury to:

Executive Director
Office of Consumer Protection
P.O. Box 45025
124 Halsey Street
Newark, New Jersey 07101
Tel: (201) 504-6257

2. If the injured person was seen in a licensed health-care facility or other medical treatment center, or on the premises of a health maintenance organization, the physician or designee shall promptly report the injury or death to the medical director of that organization.

3. The medical director shall transmit the information supplied pursuant to (b)2 above as soon as practicable but no later than the next business day to the Office of Consumer Protection at the address set forth in (b)1 above.

(c) The initial report to the Office of Consumer Protection shall be made by telephone during business hours (8:30 A.M. to 4:30 P.M. Monday through Friday); the physician or medical director, as applicable, shall then complete a written form provided by the Office

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of Consumer Protection and shall return it within seven days of receipt to the address set forth in (b)1 above.

(d) The Division Director shall maintain a record of the toy-related injuries or deaths reported by physicians and medical directors and shall:

1. Prepare a report which does not identify either the physician or patient involved;

2. Transmit the information on a regular basis to the U.S. Consumer Product Safety Commission; and

3. Make the report available monthly to the public, upon request to the Office of Consumer Protection at the address set forth in (b)1 above. The request shall include a check or money order, payable to "Division of Consumer Affairs," for the processing fee of $5.00. Cash will not be accepted.

(e) If upon review of such reports of injury or death, the Director determines that a specific toy may pose an immediate danger to the residents of this State, the Director shall issue a statement warning the public that such reports have been received.

(f) The Director may release the information identifying the physician and/or patient involved solely to an appropriate governmental organization for good cause shown.

(g) Failure by a physician or medical director to report a toy-related injury or death as set forth herein shall be referred by the Director to the attention of the State Board of Medical Examiners, or the State Board of Chiropractic Examiners, as applicable.

13:*[54A]****45A***-24.3 Toy recall notices

(a) As used in this section, the following words shall have the following meanings:

"Dealer" means a person who sells at retail a toy or other article intended for use by children. A dealer who sells at wholesale such toy or article shall, with respect to that sale, be considered the "distributor" of that item.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Distributor" means a person who sells at wholesale a toy or other article intended for use by children***, or a parent company which purchases said items and distributes them to its authorized outlet stores***.

"Manufacturer" means a person who, under any name, manufactures or imports a toy or other article distributed in New Jersey. When the toy or other article is distributed or sold under a name other than that of the actual manufacturer of the toy or other article, the term "manufacturer" includes any person under whose name the toy or other article is distributed or sold.

(b) Any manufacturer, distributor or dealer who, pursuant to any law or any regulation of the U.S. Consumer Product Safety Commission, is required to give public notice or who voluntarily gives such notice, with regard to a defect or hazard in any toy or other article intended for use by children, shall at the same time notify the Director, in writing, at the following address:

Executive Director
Office of Consumer Protection
P.O. Box 45025
124 Halsey Street
Newark, New Jersey 07101
Tel. (201) 504-6257

(c) A dealer shall maintain a record of receipt of toy recall notices, including the date of receipt, and shall make it available upon request to a representative of the Office of Consumer Protection.

(d) A dealer who is notified by a manufacturer, a distributor, or the U.S. Consumer Product Safety Commission of a defective or hazardous toy or other article intended for use by children shall, if the dealer has carried or normally carries such item, prominently display that notification for at least 120 days after its receipt on each premises where the toy or article was sold or would normally be sold, as follows:

1. Each notification shall be displayed ***at the principal entrance of the store, or in the cash register area, or*** in a location ***elsewhere*** that is readily accessible to the public***. Notifications shall be****[, and]* placed so that *[it]* ***they*** can be easily read by adult persons of average height and normal vision. No structures, furniture, boxes, merchandise, packaging material, etc., shall impede access to the *[location]* ***display of notifications***.

*[2. A sign constructed of cardboard, poster paper, or similarly durable substance, shall be placed in proximity to each cash register and shall contain the following wording in boldface capital letters printed in color that contrasts with the background:

WE HAVE POSTED NOTIFICATIONS OF TOYS OR OTHER ITEMS INTENDED FOR USE BY CHILDREN, WHICH ITEMS HAVE BEEN FOUND TO BE DEFECTIVE OR HAZARDOUS. PLEASE CHECK THESE NOTIFICATIONS! THEY ARE LOCATED AT [location]. IF WE CARRIED THESE ITEMS, WE HAVE REMOVED THEM FROM OUR SHELVES, BUT YOU MAY ALREADY HAVE ONE AT HOME. (YOU MAY ALSO BE ENTITLED TO A REFUND.)

The sign shall be easily visible and shall measure no less than five inches by eight inches.]*

*[(d)]****(e)*** The Director shall publish and disseminate to the public, at least quarter-annually, a summary of toys and other items intended for use by children, which items have been found to be defective or hazardous. The summary shall be drawn from findings of the U.S. Consumer Product Safety Commission and voluntary notices from manufacturers or distributors. In addition, the Director shall alert the public about particular toys or items, as warranted from time to time.

*[(e)]****(f)*** Failure to comply with any requirement of this section shall be deemed a violation of the Consumer Fraud Act, N.J.S.A. 56:8-2 et seq.

13:45A-24.4 Bicycle safety notices

(a) A bicycle safety statement promoting the use of helmets shall be prominently affixed to every new or used bicycle offered to be sold or sold at retail by a person in the business of selling bicycles. *[1.]* The statement shall be attached to the seat or handlebars of the bicycle or, if unassembled, ***prominently printed on or*** firmly attached to the outside *[top]* of the box or carton containing the unassembled bicycle.

*[2.]****(b)*** The statement may be in the form of the warning card, "This Bike Is Missing One Part," designed by the New Jersey Coalition for Prevention of Developmental Disabilities, available from:

The New Jersey Coalition for the Prevention of Developmental Disabilities
985 Livingston Avenue
North Brunswick, New Jersey 08902
Tel. (908) 246-2525

[3.] Alternatively, the statement promoting the use of bicycle helmets may be in the form of a tag *[or]****,*** notice***, or decal*** designed by the bicycle supplier or retailer, provided the wording is clear and concise, appears in no less than 20-point type and is printed in boldface capital letters, in color contrasting with the background. The tag or notice shall be made of cardboard or durable paper and shall be no smaller than four inches by six inches; it may be covered by transparent plastic but shall not be obscured.

*[4.]****(c)*** A statement promoting the use of bicycle helmets that is *[incorporated in other material, such as an]* ***contained within the text of the*** owner's manual, shall not satisfy the requirement.

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(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Daily Triple
Adopted Amendment: N.J.A.C. 13:70-29.50

Proposed: April 19, 1993 at 25 N.J.R. 1671(a).
Adopted: June 21, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: June 25, 1993 as R.1993 d.366, **without change**.
Authority: N.J.S.A. 5:5-30.
Effective Date: July 19, 1993.
Expiration Date: January 25, 1995.

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

Full text of the adoption follows:

13:70-29.50 Daily Triple
(a)-(l) (No change.)
(m) If any of the daily triple races result in a dead heat, the payoff will be figured the same as a place pool, that is: first the regulation commission is deducted, then the total amount wagered on the winning combination is deducted, leaving the profit which is divided equally between the holders of the winning combinations.
(n) (No change.)

TRANSPORTATION

(b)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING

Notice of Administrative Correction
State Highway Access Management Code
Type of Permit and Review Determination
N.J.A.C. 16:47-4.4

Take notice that the Department of Transportation has discovered an error in the current text of N.J.A.C. 16:47-4.4(a). The last sentence of the subsection is the result of an error in publication of the adopted text of the rule that resulted in two proposed sentences partially deleted and combined as one (see 23 N.J.R. 1525(a) and 24 N.J.R. 1518(b)). The original notice of adoption, R.1992 d.181, does not include the brackets with asterisks appearing in the last two sentences of N.J.A.C. 16:47-4.4(a) in the published notice of adoption (see 24 N.J.R. 1577), and the deletion of text through those symbols was in error. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

16:47-4.4 Type of permit and review determination
(a) The Department shall determine the types of applications required. Single-family residential permits, residence and business combined permits, and government driveway permits shall be classified based on the definitions in N.J.A.C. 16:47-1.1. The Department shall be guided by Appendix E and Appendix E1, Access Application Thresholds, incorporated herein by reference, in determining the other types of applications and in determining which Department units will review an application. Any use generating less than 500 vehicle trips per day to and from the lot requires a minor application. Any use generating 500 or more vehicle trips per day and less than 200 peak-hour vehicle trips to and from the lot requires a major application. **Any use generating 500 or more vehicle trips per day and 200 or more peak-hour vehicle trips to and from the lot requires a major application** with a planning review.
(b)-(f) (No change.)

TREASURY-GENERAL

(c)

STATE PLANNING COMMISSION

State Planning Rules
Adopted Amendments: N.J.A.C. 17:32-7

Proposed: May 3, 1993 at 25 N.J.R. 1839(a).
Adopted: June 25, 1993 by the State Planning Commission, James G. Gilbert, Chairman.
Filed: June 25, 1993 as R.1993 d.367, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 52:18A-203.
Effective Date: July 19, 1993.
Expiration Date: March 19, 1998.

Summary of Public Comments and Agency Responses:
Notice of the proposed amendments to subchapter 7 of the State Planning Rules, N.J.A.C. 17:32, was published in the New Jersey Register on May 3, 1993. Notice of the proposed amendments was also sent to the 2,209 people on the State Planning Commission distribution list. The notice invited written comments to be submitted on or before June 2, 1993. An opportunity for public comment was also provided at the State Planning Commission meeting on June 25, 1993. Comments were received from the following: Mary Owen of W. Long Branch and the Hillsdale Planning Board. Both comments are available for inspection at the offices of the State Planning Commission, 33 West State Street, Trenton, New Jersey.
The comments were as follows:
1. Ms. Owen expressed her agreement with the proposal.
2. The Hillsdale Planning Board opposes the rule based on the belief that voluntary consistency will eventually lead to mandatory compliance.
RESPONSE: The State Planning Act does not require local plans to be consistent with the State Development and Redevelopment Plan. Therefore, the State Planning Commission has no authority to require such compliance either now or in the future. The purpose of these rules is to assist those municipalities and counties that choose to achieve some level of consistency with the State Plan to do so.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

(OFFICE OF ADMINISTRATIVE LAW NOTE: A portion of the current text of N.J.A.C. 17:32-7.4(g), adopted as subsection (e), was inadvertently omitted from the proposal text. The missing text is included below, with the word "petition" changed to "request"; upon adoption to conform to the adopted subsection terminology.)

SUBCHAPTER 7. VOLUNTARY SUBMISSION OF PLANS FOR CONSISTENCY REVIEW

17:32-7.1 Purpose
(a) The State Planning Act recommends but does not require that municipal and county plans be consistent with the State Development and Redevelopment Plan. During the cross-acceptance process, however, many government officials and citizens expressed concern, given the complexity of public plans and processes in general and of the State Plan in particular, about how agencies at each level of government would know whether their plans are consistent with the State Plan. It is the intention of the State Planning Commission, through the Office of State Planning, to assist all levels of government in achieving the highest possible degree of consistency with the State Plan. To that end, this subchapter outlines a voluntary review process which will analyze local, county, regional and State agency plans and provide findings and recommendations regarding the subject plan's incorporation of the various provisions of the State Plan.
(b) (No change.)
(c) No municipal, county, regional or State agency should delay any decision making process due to a pending review of their plans by the Office of State Planning for consistency with the SDRP.

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(d) (No change.)

17:32-7.2 Eligibility

(a) Any municipal or county governing body, commissioner or secretary of a State department, regional or interstate agency may petition the Office of State Planning for a review of the consistency between its plan and the State Development and Redevelopment Plan.

(b) The master plans of municipalities (including elements as defined in the Municipal Land Use Law), and counties (as defined in the County Planning Enabling Act), functional plans of State agencies, and the adopted comprehensive plans of regional and interstate agencies are eligible for review by the Office of State Planning under these rules. Codes, ordinances, administrative rules, regulations and other instruments of plan implementation are not eligible for review. Nothing in these rules shall be interpreted to mean, however, that the staff of the Office of State Planning and Commission may not provide technical assistance and advice to agencies at any level of government on matters falling under the mandates of the Commission or Office, as set forth in the State Planning Act, N.J.S.A. 52:18A-196 et seq.

17:32-7.3 Notification of petition filing

(a) Municipalities shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the municipality, prior to their submission of a petition for consistency review. Notice shall also be sent to the petitioning municipality's planning board, to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities.

(b) Counties shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the county, prior to their submission of a petition for consistency review. Notice shall also be sent to the petitioning county's planning board, to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties.

(c)-(f) (No change.)

17:32-7.4 Procedures

(a) Petitions for consistency review may be submitted to the Director of the Office of State Planning, no sooner than 60 days after adoption of the State Development and Redevelopment Plan by the State Planning Commission.

(b) (No change.)

(c) In cases where the Director of the Office of State Planning finds that the petition is not submitted in accordance with these rules, the Director shall inform the petitioner in writing within 30 days after receipt of the petition of the deficiencies in the petition. If a corrected petition is resubmitted, the petition will be considered in accordance with (d) below. If a corrected petition is not resubmitted within 30 days after receipt of the Director's notice, or is resubmitted incorrectly, the petition will be considered withdrawn and the petitioner so notified. No further action by the Director will be taken.

(d) In cases where the Director of the Office of State Planning finds that the petition is submitted in accordance with these rules, or is resubmitted correctly pursuant to (c) above, he shall, within 90 days of such a finding, review said plan(s) and prepare findings and recommendations regarding the degree to which the subject plan is consistent with the provisions of the SDRP, how effectively that has been done, and what steps can be taken by the petitioner to move the plan, in whole or in part, toward further consistency with the SDRP. The Director shall forward his report to the petitioner and the State Planning Commission.

(e) The petitioner may, within 60 days after receipt of the Director's report, request that the State Planning Commission, or its duly authorized subcommittee, review the Director's findings. Within 60 days after receipt of such a request, the State Planning Commission may act on said *[petition]* ***request***; if the Commission does not act within 60 days, the Director's findings and recommendations regarding the petition will stand.

(f) The State Planning Commission may, at its discretion, review the findings and recommendations of the Director of the Office of State Planning regarding any petition filed under this subchapter. The Commission shall declare its intention to review the Director's findings and recommendations within 30 days of its receipt of the Director's report pursuant to (d) above. Within 60 days after receipt of the Director's report, the Commission may act to revise or reverse those findings and recommendations. If the Commission does not declare its intention to review the Director's findings and recommendations within the 30 day period, or having declared its intention to review, does not act within the 60 day period, the Director's findings and recommendations will stand.

(g) The Director of the Office of State Planning shall, within 30 days after State Planning Commission action, or nonaction, as set forth in (e) or (f) above, notify the petitioner in writing of the Commission's findings and recommendations regarding the petition.

17:32-7.5 Public notification of Director's or Commission's review

(a) Within 30 days of their receipt of the Director's notification pursuant to N.J.A.C. 17:32-7.4(d) or (g), the petitioner shall provide public notice in the following manner:

1. Municipalities shall provide public notice in a newspaper of general circulation within the municipality. Notice shall also be sent to the petitioning municipality's planning board, to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities.

2. Counties shall provide public notice in a newspaper of general circulation within the county. Notice shall also be sent to the petitioning county's planning board, to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties.

3. State agencies shall notify the 21 county planning boards and shall further cause notice to be published in the next available New Jersey Register.

4. Regional and interstate agencies shall provide public notice in a newspaper of general circulation within the New Jersey portion of their jurisdiction. Notice shall also be sent to the planning boards of all New Jersey municipalities and counties within the agency's jurisdiction.

(b) All notifications required under (a) above shall contain, at a minimum, the following information:

1.-2. (No change.)

3. A statement to the effect that the subject plan was reviewed by the Director of the Office of State Planning and/or the State Planning Commission and that copies of the subsequent findings and recommendations are available from the Office of State Planning and from the petitioner.

(c) Newspaper notices may be published as a standard legal advertisement.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Financial Business Corporation; Definition

Adopted Amendment: N.J.A.C. 18:7-1.16

Proposed: May 3, 1993 at 25 N.J.R. 1841(a).

Adopted: June 24, 1993 by Leslie A. Thompson, Director, Division of Taxation.

Filed: June 25, 1993 as R.1993 d.364, **without change**.

Authority: N.J.S.A. 54:10A-27.

Effective Date: July 19, 1993.

Expiration Date: March 14, 1994.

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

Full text of the adoption follows:

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18:7-1.16 Financial business corporation; definition
(a) (No change.)
(b) For purposes of this section:
1. (No change.)
2. "Residual value of the property" means the estimated value of the leased property at the end of the original lease as determined at the time the lease is executed.
3. (No change.)
(c)-(g) (No change.)

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing: General Elections for the Office of Governor

Adopted Amendments: N.J.A.C. 19:25-15.17 and 15.48

Proposed: May 17, 1993 at 25 N.J.R. 1957(b).
Adopted: June 24, 1993 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Filed: June 25, 1993 as R.1993 d.363, **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-16 and 19:44A-38.
Effective Date: July 19, 1993.
Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:
The proposed amendments were published on May 17, 1993, and a public hearing was held before the Commission on June 18, 1993. Notice of the hearing and the text of the proposal were mailed on May 4, 1993 to interested persons. Notice of the hearing was circulated to the public and press on June 10, 1993. The comment period expired on June 16, 1993. **No written comments were received.** The hearing record may be reviewed at the offices of the Commission at 28 West State Street, Trenton, New Jersey.

Testimony was offered at the June 18, 1993, public hearing by Angelo Genova, Esq., counsel to Florio '93, Inc., and Peter Verniero, Esq., representing People for Whitman.

COMMENT: The commenters indicated that they understood the intent of the proposed amendments to maximize disclosure by requiring contributor occupation and employer information to be reported on public matching fund submission documents. This additional disclosure requirement was derived from statutory changes to N.J.S.A. 19:44A-16 enacted on March 8, 1993 (P.L. 1993, c.65, section 9). The commenters expressed a concern, however, that requiring the additional information as a condition for receipt of public matching funds for contributions in excess of $200.00 from individuals would be especially difficult until campaigns had ample time to educate their staffs and the public about the new requirements to disclose contributors' occupations and employers.

RESPONSE: The Commission acknowledged the unfamiliarity of the public with the recently-enacted requirement to disclose on campaign reports required by the New Jersey Campaign Contributions and Expenditures Reporting Act (N.J.S.A. 19:44A-1 et seq.) occupation and employer information for individual contributors whose aggregate contributions exceed $200.00. The Commission considered the commenters' concerns that requiring such disclosure at an even earlier date on public matching fund submission documents would be burdensome and might affect the early flow of public funds to campaigns when the funds were most needed. The Commission therefore added text to the proposed amendments to clarify that the absence on public matching fund documents of information concerning the occupation and employer of individuals whose aggregate contributions exceed $200.00 would not automatically delay certification of public funds to a gubernatorial campaign. The additional text therefore reduced the impact of the proposed amendments on publicly-financed gubernatorial campaigns in the 1993 general election.

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

19:25-15.17 Matching of funds
(a)-(k) (No change.)
(l) The lists of contributors submitted pursuant to this section shall also include for each contributor who is an individual and whose aggregate contributions to the candidate in the general election exceed $200.00 the occupation of the individual and the name and mailing address of the individual's employer. ***Nothing in this subsection is intended to prevent the Commission from certifying a contribution for match with public funds where a candidate and campaign treasurer are unable to provide, after good faith efforts, information concerning the occupation of the individual contributor and the name and mailing address of the employer of the individual contributor whose aggregate contributions to the candidate in the general election exceed $200.00.***

19:25-15.48 Candidate statement of qualification before participation in public financing
(a) A candidate who intends to apply to the Commission for public matching funds on a date later than September 1 preceding a general election for the office of Governor must on or before September 1 preceding the general election for Governor file:
1.-3. (No change.)
4. For each contribution from an individual whose aggregate contributions to the candidate in the general election exceed $200.00 which is submitted in the report required by (a) above, the certified statement of qualification shall include the occupation of the individual and the name and mailing address of the individual's employer. ***Nothing in this paragraph is intended to prevent the Commission from certifying a contribution for match with public funds where a candidate and campaign treasurer are unable to provide, after good faith efforts, information concerning the occupation of the individual contributor and the name and mailing address of the employer of the individual contributor whose aggregate contributions to the candidate in the general election exceed $200.00.***
(b)-(c) (No change.)

(b)

CASINO CONTROL COMMISSION

General Provisions

Organization and Operation of the Commission

Adopted Amendments: N.J.A.C. 19:40-2.1

Adopted: June 17, 1993 by the Casino Control Commission, Steve P. Perskie, Chairman.
Filed: June 18, 1993 as R.1993 d.352.
Authority: N.J.S.A. 5:12-69(a) and 52:14B-4(b).
Effective Date: June 18, 1993.
Expiration Date: August 24, 1994.

These proposed amendments are organizational and, as such, in accordance with N.J.S.A. 52:14B-4(b) may be adopted without prior notice or hearing and are effective upon filing.

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

19:40-2.1 Organization
(a)-(b) (No change.)
(c) The Commission's staff shall be comprised of the divisions set forth below. Each division shall be organized into such operational units, and each unit shall have such assigned positions, as the Chair shall direct.
1.-3. (No change.)
4. The Division of Compliance shall review and evaluate petitions and submissions related to accounting and internal controls, gaming equipment and rules of the games; monitor compliance with regulations regarding accounting and internal controls, gaming equipment

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and rules of the games; receive patron complaints; and monitor and promote compliance by casino licensees, gaming schools, casino service industries and [constrution] **construction** industries with State equal employment opportunity, affirmative action, and minority and women's business enterprise requirements.

5. The Office of the Commissioners shall consist of **the Affirmative Action Officer,** the General Counsel, the Public Information Officer, the Director of Governmental and Community Relations and the Executive Secretary, together with the members of the respective staffs. The members of the office [shall], together with the Chair [and], the directors of the several divisions[,] **and such members of the senior staff as the Chief of Staff may designate, shall** constitute the management team of the Commission, and shall execute general Commission policies as established by the [Commissioners] **Commission.**

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PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session August 18, 1993

Take notice that the following agenda item is scheduled for Notice of Proposal in the October 4, 1993 New Jersey Register and is, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, August 18, 1993 from 3:00 P.M. to 6:00 P.M. in the Training Room on the 8th Floor, East Wing, 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, August 13, 1993.

Rule Proposal:

N.J.A.C. 6:2, State Board Appeals Code

Please note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the September 1, 1993 monthly public meeting.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on May 24, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment adopts the Wantage Township Wastewater Management Plan (WMP). The WMP delineates the ground water discharge areas for facilities with a design capacity of less than 2,000 gallons per day (gpd), the ground water discharge areas for facilities with a design capacity of less than 20,000 gpd (wastewater flows not to exceed 390 gal/acre/day), and the service areas of the Regency at Sussex and High Point High School existing sewage treatment plants (STPs). The WMP also identifies the following three proposed STPs for wastewater generated from any water treatment process: STP for Borough of Sussex water treatment facility, STP for Simmons Water Company, and the STP for Baldwin Well Drilling Company. The WMP also identifies the existing STP at the Department of Corrections High Point Annandale Unit.

HUMAN SERVICES

(c)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds State Legalization Impact Assistance Grant Anti-Discrimination Employment Education Program.

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. Name of grant program: Division of Youth and Family Services State Legalization Impact Assistance Grant Anti-Discrimination Employment Education Program.

B. Purpose for which the grant funds shall be used: The purpose of this funding is to provide a statewide program to design, develop, implement, administer and operate a comprehensive coordinated program for anti-discrimination employment education in the State of New Jersey relative to the anti-discrimination provisions of the Immigration Reform and Control Act, Public Law 90-603, as authorized by the Immigrant Nurses Act, Public Law 101-238. Services are for a broad range of activities, including, but not limited to: the development, production and distribution of informational literature; the production and publication of advertisement in electronic and/or printed media; and conducting meetings, seminars or other public functions and advocacy.

C. Amount of money in grant program: Funding in the amount of $400,000 from the State Legalization Impact Assistance Grant is available. These are annualized Federal Fiscal Year 1993 funds (October 1, 1993—September 30, 1994) and no matching funds are required. These funds will be awarded to a single contracted entity to provide a Statewide program.

D. Organizations which may apply for funding under this program: Any public, non-profit or for-profit organization with the ability to provide these services and which possess legal status may apply. The applicant is responsible for the provision of services and management of the program both fiscally and programmatically.

E. Qualifications needed by an applicant to be considered for funding: Through written proposals, agencies must demonstrate the capacity to carry out the purposes of the proposal and the ability to evaluate the success of their program. Applicants must demonstrate their ability to understand the program and to successfully develop and implement their proposal.

F. Procedure for eligible organizations to apply: Interested applicants may request a copy of the Request for Proposal by contacting John L. Morino, at (609) 633-7781 or by visiting the Office of Immigrant and Refugee Services of the Division of Youth and Family Services at Capital Center 7th floor, 50 East State Street, Trenton, New Jersey. A bidders conference is scheduled for August 6, 1993 at 10:00 A.M. at the Central Office of the Division in Room 721 at the address listed above.

G. Address to which applications must be submitted: Agencies interested in applying for these funds should submit one signed original and six copies of the completed Request for Proposal and all required supporting materials and copies by mail or in person to:

John L. Morino
Office of Immigrant and Refugee Services
Division of Youth and Family Services
Capital Center 7th Floor
50 East State Street
CN 717
Trenton, N.J. 08625-0717

H. Deadline by which applications must be submitted: Completed proposals shall be delivered or mailed to the Office of Immigrant and Refugee Services at the address listed above by September 3, 1993 not later than 4:00 P.M. Mailed proposals must be postmarked by September 3, 1993.

I. Date by which applicants shall be notified of acceptance or rejection: September 17, 1993.

INSURANCE

(d)

DIVISION OF PROPERTY LIABILITY

Notice of Receipt and Action on Petitions for Rulemaking

Petitioner: New Jersey Land Surveyor's Council
Authority: N.J.S.A. 17:46B-1 et seq.

Take notice that on April 21, 1993 the New Jersey Department of Insurance ("Department") received 11 petitions for rulemaking from the New Jersey Land Surveyor's Council ("Petitioner").

The petitions request that the Department act upon a series of proposed rules regarding title insurance and licensed producers with title insurance authority. The subjects of the proposed rules are as follows:

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1. An administrative rule to prohibit purchase, promotion or use of any "wash-out survey" on any basis;
2. An administrative rule requiring the Department to acknowledge receipt of all correspondence and to notify any and all affected parties within five working days following action by the Department on any matter;
3. An administrative rule prohibiting the use of any land or boundary survey over 90 days old for the purposes of conveyancing or mortgaging real properties;
4. An administrative rule to define the necessity for a land or boundary survey in every real property conveyance and/or financial transaction in which real property is to be used as collateral for a loan or mortgage;
5. An administrative rule to define the fiduciary duty of a licensee when ordering or advising a client about ordering a land or boundary survey;
6. An administrative rule providing treble damages for licensees who do not take good care when purchasing, soliciting for, receiving or using any land or boundary survey which fails to meet the "minimum technical standards;"
7. An administrative rule to limit the removal of the survey exception in "Schedule 'B' " to cases where the land or boundary survey of the subject real property is current;
8. An administrative rule to prohibit the use of any land or boundary survey without an accompanying map, plat, drawing or sketch which meets the requirements of the "minimum technical standards;"
9. An administrative rule prohibiting illegal "deed plot surveys" used for the purpose of circumventing the requirement for a full boundary survey;
10. An administrative rule to define land or boundary surveys; and
11. An administrative rule prohibiting the use of an "owners survey affidavit and indemnification agreement" in lieu of a correct survey.

The Petitioner identified itself as an unincorporated organization of persons either registered as land surveyors in New Jersey or who have an interest in land surveying. The Petitioner also stated that the professional activities of many of its members are regulated, in part, by this Department, and that the interests of its members will be damaged if the rules as petitioned are not implemented.

Initially, the Department notes that it does not directly regulate either land surveyors (which are licensed and regulated by the State Board of Professional Engineers and Land Surveyors, see N.J.S.A. 45:8-27 et seq.) or real estate conveyancing and financing transactions. The Department acknowledges that it regulates the business of title insurance in this State, N.J.S.A. 17:46B-1 et seq., and that it licenses producers with title insurance authority, N.J.S.A. 17:22A-1 et seq. Some of the rules requested by the Petitioner may directly affect the Department's regulation of title insurers or licensed producers, such as the proposals suggested in paragraphs 1, 3, 6, 7, 8, 10 and 11 above. On the face of the petitions, however, it appears that the other proposed rules more directly impact the regulatory jurisdiction of the State Board of Professional Engineers and Land Surveyors, the Department of Banking (with respect to the mortgaging of real property), or the Real Estate Commission (with respect to the conduct of its licensees' participation in real estate transactions). The Department notes that the petitions did not specifically reference the Department's statutory authority to take the requested action on each of the petitions, as required by N.J.A.C. 11:1-15.2(a)4.

Pursuant to N.J.A.C. 11:1-15.3, upon due consideration of the petitions in accordance with law, the Department's action on all 11 petitions shall be to refer them for further deliberations to be concluded on or before October 1, 1993. Because the 11 separate petitions for rules appear to be interrelated and to provide a comprehensive regulatory scheme on related subject matter, it is appropriate that none of the petitions be denied at this time, pending further examination by the Department on their effect upon those proposed rules that directly affect the business of title insurance and the conduct of licensed insurance producers with title insurance authority. The further deliberations shall address the following regarding the petitions for proposed rules:

1. To examine the statutory authority of the Department to adopt rules as requested in the petitions, consistent with its responsibilities to regulate the business of title insurance and licensed insurance producers;
2. To gather more information regarding the nature of the problems presented and proposed to be addressed by the rules, that is, whether the problems asserted by the Petitioner are problems that affect the public generally, or whether they are limited to a particular constituency, and how the problems relate to the business of title insurance as presently conducted in this State;
3. To gather more information about how these problems are addressed, if at all, by other State agencies that appear also to have jurisdiction over some or all of the subject matter, particularly: the State Board of Professional Engineers and Land Surveyors; the Department of Banking; and the Real Estate Commission; and
4. To recommend whether the petitions, or any of them, should be proposed as rules by the Department regarding the business of title insurance or regarding the conduct of licensed insurance producers with title insurance authority.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS ACUPUNCTURE EXAMINING BOARD

Notice of Receipt of Petition for Rulemaking N.J.A.C. 13:35-9.16 Training Required of a Physician or Dentist

Petitioner: Medical Society of New Jersey

Take notice that on May 19, 1993, Neil E. Weisfeld, Director of Education, Research and Regulatory Affairs of the Medical Society of New Jersey ("petitioner") filed a petition for rulemaking with the Board of Medical Examiners regarding the practice of acupuncture.

Take further notice that pursuant to N.J.S.A. 45:2C-3 rulemaking authority with regard to the practice of acupuncture lies with the Acupuncture Examining Board, subject to the review and approval of the Board of Medical Examiners. Accordingly, petitions for rulemaking concerning the practice of acupuncture must be directed to the Acupuncture Examining Board. The Board has determined to treat petitioner's submission to the Board of Medical Examiners as a formal petition for rulemaking to the Acupuncture Examining Board.

Petitioner requested a stay in the implementation of N.J.A.C. 13:35-9.16 and a corresponding amendment to reduce the required number of hours for physician acupuncture training from 300 to 200. Petitioner argues that the Board has not advanced a persuasive reason to justify the 300-hour requirement; that licensed physicians who received 200 hours of acupuncture training from nationally accredited schools of medicine, and who subsequently have presumably been performing acupuncture procedures safely and effectively, will be deprived from continuing to perform in this area of practice; that the rule was adopted in the apparent presence of misinformation; and that the process the Board used to obtain legal advice regarding this matter was flawed in that it involved an apparent conflict of interest.

Take further notice that the Board will consider this petition at its June 30, 1993 meeting and will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.

(b)

DIVISION OF CRIMINAL JUSTICE

Notice of Action on Petition for Rulemaking Administration and Maintenance Responsibilities for Law Enforcement Funds N.J.A.C. 13:77-2.2, 13:77-2.4 and 13:77-2.5

Petitioner: John T. Paff, Chairman, FEAR (Forfeiture Endangers American Rights)

Take notice that on September 21, 1992, the Department of Law and Public Safety received a petition for rulemaking from John T. Paff, Chairman, FEAR (Forfeiture Endangers American Rights). The petition requests that the Department amend its forfeited property distribution rules N.J.A.C. 13:77-2.2, 13:77-2.4 and 13:77-2.5. Petitioner's stated purposes in requesting the amendments include (1) "clarification" of law enforcement fund administration and maintenance responsibilities and (2) public "control" of law enforcement fund expenditures.

Two requested amendments are intended to require the entity funding a prosecuting agency (and permit no other entity or agency) to establish, administer and maintain law enforcement funds for forfeited property.

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The third requested amendment is intended to require a funding entity to disburse funds from a Special Law Enforcement Fund only by resolution and only upon the entity's certification that the disbursement serves a law enforcement purpose. A formal notice of receipt of this rulemaking petition was published in the January 19, 1993 New Jersey Register (25 N.J.R. 375(b)).

Take further notice that the Department's own proposal to readopt with amendments its forfeited property distribution rules, N.J.A.C. 13:77, then was pending in the Office of Administrative Law. Formal notice of that proposed readoption with amendments was published in the December 21, 1992 New Jersey Register (24 N.J.R. 4492(a)) and elsewhere. The readopted rules became effective on January 22, 1993; the amendments became effective upon publication in the February 16, 1993 New Jersey Register (25 N.J.R. 710(b)). In addition, the Department then was participating in legislative hearings on proposed amendments to the civil forfeiture statute, N.J.S.A. 2C:64-1 et seq., the source of authority for N.J.A.C. 13:77 forfeited property distribution rules. Neither the Department's proposed rules readoption with amendments nor any known proposed statutory amendment contained the amendments requested in the present petition for rulemaking.

Accordingly, the Department needed more time to study the amendments requested in the present petition for rulemaking to determine (1) whether they were necessary to accomplish the purposes of N.J.S.A. 2C:64-1 et seq., (2) whether they were consistent with the purposes of N.J.S.A. 2C:64-1 et seq., or (3) whether they were contrary to the purposes of N.J.S.A. 2C:64-1 et seq., all in the context of the then pending rules readoption with amendments and of the hearings on proposed statutory amendments. The Department's intention to make its determinations and act on the petition for rulemaking by July 1993 was published as a formal notice of action in the February 16, 1993 New Jersey Register (25 N.J.R. 723(a)).

Take further notice that the Department certifies that the petition has been duly considered pursuant to law and that the petition is denied. The proposed rulemaking that would "clarify" law enforcement fund administration and maintenance responsibilities, remove them from the prosecuting agency and place them exclusively within the control of the funding entity is not necessary to accomplish the purposes of N.J.S.A. 2C:64-1 et seq. The rules in their present form are sufficient to accomplish those statutory purposes. Similarly unnecessary is the proposed rulemaking that would make a formal resolution and certification of the funding entity's governing body a prerequisite to disbursement of forfeiture funds from the "Special Law Enforcement Fund."

OTHER AGENCIES

(a)

WATERFRONT COMMISSION OF NEW YORK HARBOR

Amended Regulations

Take notice that the Waterfront Commission of New York Harbor, an instrumentality of the States of New York and New Jersey, adopted on June 23, 1993 amendments to its regulations, which are published as an Appendix to Title 19 of the New Jersey Administrative Code.

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

PART 1
GENERAL PROVISIONS

Section 1.1 Definitions in Waterfront Commission Act; **gender**.

(a) For the purposes of [this Chapter] **these Regulations**, unless the context clearly requires otherwise, the definitions contained in the Waterfront Commission Act shall be used. **Waterfront Commission Act** (hereinafter referred to as the [act] **Act**) shall mean chapter 882 of New York Laws of 1953 and chapter 202 of New Jersey Laws of 1953, both as amended and supplemented, and shall include the Waterfront Commission Compact (part I of the [act] **Act**) as consented to by chapter 407 of Public Law 252 of the 83rd Congress (August 12, 1953), and all concurrent legislation enacted by the States of New York and New Jersey pursuant to or in furtherance of the [act] **Act**.

(b) All references to the masculine gender in these Regulations shall be deemed to include the feminine gender.

1.2 Suspension of regulations.

In the event of public emergency occasioned by, but not limited to, acts of God, acts of war, acts of violence or breaches of the peace, the commission may by resolution revoke or suspend, in whole or in part, any of these regulations when in its opinion the purposes of the [act] **Act** will thereby be furthered or effectuated.

1.3 Impeding purposes of [act] **Act**.

In the event that any regulation adopted by the commission has been or is being utilized by any person to impede, obstruct or frustrate the purposes of the [act] **Act**, the commission may by resolution revoke or suspend, in whole or in part, the privileges accorded to such person by such regulation when in its opinion the purposes of the [act] **Act** will thereby be furthered or effectuated. Nothing contained in [this Chapter] **these Regulations** shall, however, abridge any statutory or constitutional right of such person.

1.4 Subpoena of commission records.

A member, officer or employee who is served with a subpoena requiring the disclosure of information or the production of documents not available for public inspection pursuant to section [1.24] **1.23** of this Part, shall, unless otherwise directed by the commission, appear as directed by the subpoena and, unless otherwise authorized by the commission, shall respectfully decline to discuss the information or produce the documents called for, basing the refusal upon this section. Any member, officer or employee who is served with such subpoena shall promptly advise the commission of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents. Nothing herein shall prohibit the commission from authorizing the disclosure or exchange of information with any public official, agency or other person upon a finding that the purposes of the [act] **Act** will be effectuated thereby.

1.5 Subpoenas.

(a) A subpoena, including a subpoena *duces tecum*, may be issued by any officer, agent or employee who has been duly authorized by resolution of the commission to issue such subpoenas. A subpoena shall state the section of the Act pursuant to which it is issued.

(b) A subpoena shall be personally served. Personal service shall consist of either placing the subpoena in the hand of the person named therein or of touching his person with the subpoena and informing him that it is a subpoena of the Waterfront Commission of New York Harbor. A subpoena may be returnable on any day except Sunday at any time between 8:00 a.m. and 9:00 p.m.

(c) Tender of witness fees is not required. A person, **other than an applicant or a respondent or an officer, director or shareholder of an applicant or respondent,** subpoenaed by the commission to appear at any interview, hearing or other proceeding, conducted by the commission, is entitled to [50 cents] **two dollars ($2.00)** a day for each day's actual attendance, or, to [one dollar] **five dollars ($5.00)** per day for each day's actual attendance if he appears pursuant to a subpoena *duces tecum*. If a person, **other than an applicant or a respondent or an officer, director or shareholder of an applicant or respondent,** so subpoenaed resides more than three miles from the place of attendance, he shall also be entitled to eight **(.08¢)** cents for each mile going from the place of residence to the place of attendance. Such fee shall be payable by the secretary of the commission upon demand by the person subpoenaed after actual attendance, upon certification thereof by an officer, agent or employee of the commission.

1.6 (No change.)

1.7 Notices and petitions to **and from** commission.

(a) Unless otherwise provided by regulation, all notices and petitions to the commission shall be given in writing and delivered by first class mail or by hand, addressed to the Waterfront Commission of New York Harbor, at its main administrative offices. If delivered by mail, notice shall be deemed given only when actually received.

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(b) All notices and communications from the commission, other than those specified in section 6.3, *infra,* shall be duly served if enclosed in a properly post paid wrapper addressed to the person to be notified or communicated with at the address last given by him in writing to the commission and deposited, as ordinary mail, in a post office, post office box, or mail chute maintained by the United States government, or if such notice or communication addressed to such person is delivered to such address by telegram or by registered or certified mail or by an employee or agent of the commission. Such service shall be deemed as having been made in the regular course of the business of the commission, without any certification of such service by an employee or agent of the commission. For the purpose of calculating the time of notice, service shall be considered effected upon the date of delivery to such address; provided that, where service is by ordinary mail, service shall be considered effective the third day after the mailing.

1.8 Withdrawal of applications and petitions and surrender of licenses and registrations.

Applications or petitions submitted to the commission may be withdrawn only with the permission of the commission. Licenses or registrations may be surrendered only with the permission of the commission. Such permission may be granted unconditionally or "with prejudice". The pendency of such application or petition **to withdraw or to surrender** shall not prevent the ordering of a hearing or the continuance of a hearing under sections 1 or 3 of article XI of the Act, as appropriate.

1.9 and 1.10 (No change.)

1.11 Notification of arrest.

Any person licensed or registered by the commission **or any person who, within the meaning of section 3.4 *infra,* is required to execute a personal character information form in connection with a stevedore's license application,** who has been charged with or arrested for any crime or offense under the penal law of any State, the District of Columbia, [or] the United States, **any territory or commonwealth thereof or any foreign country**, other than a motor vehicle or traffic offense, shall notify the commission within 20 days of his knowledge of such charge or of the arrest.

1.12 Replacement of lost license, permit or registration card.

A licensee, registrant or permittee who has lost his license, registration card or permit, after identifying himself to the satisfaction of the [division of licensing or manager of an employment information center] **commission**, shall be issued a temporary license, registration card or permit, valid for a period of not more than 30 days. He shall also submit a sworn application for replacement of his lost license, registration card or permit and, upon his payment of a replacement charge of [two] **five** dollars, the [division of licensing] **commission** shall issue to him a new license, registration card or permit.

1.13 Licenses, [and] registrations **and permits** not transferable.

A license, [or] registration card, **or permit** issued by the commission shall not be transferable at any time for any purpose.

1.14 Unauthorized retention of licenses, registrations and other instruments.

No person shall retain possession of any license, permit, registration card, badge or other means of identification or instrument issued by the commission after his license, permit or registration has expired, been **terminated,** revoked or suspended for a period of more than [five] **thirty** days.

1.15 Alteration and transfer of instruments issued by commission prohibited.

Any and all licenses, badges or other evidence of a license or registration issued by the commission shall remain its property and shall be promptly returned to the commission in accordance with [this Chapter] **these Regulations**. No person shall forge, counterfeit, alter, erase, obliterate or transfer any card, form, badge, record, means of identification or other instrument issued by the commission. No person shall transfer any card, form, badge, record, means of identification or other instrument, or have in his possession any transferred, forged, counterfeited, altered, erased or obliterated card, form, badge, record, means of identification or other instrument, whether issued by the commission or otherwise, with intent to defraud **or deceive** any person licensed by the commission in order to gain employment or priority of employment for himself or another, or with intent to defraud **or deceive** the commission in any manner.

1.16 Dismissal of application without prejudice.

Where an applicant for license or registration or a prospective licensee fails to respond to a communication or notice forwarded in accordance with the provisions of [this Chapter] **these Regulations** requesting him to provide additional information or to appear for an interview in connection with the application, or, in the case of an applicant for a license as a port watchman, to appear for **a** physical examination as required by section [5.4] **5.5**, *infra,* or, in the case of an [original or renewal] applicant for a license as a port watchman, to satisfactorily complete a course of training for port watchmen as prescribed by section [5.8] **5.10**, *infra,* the application may be dismissed by the commission without prejudice. Such dismissal shall forthwith cancel and annul any temporary permit or temporary registration unless otherwise directed by the commission.

1.17 Temporary suspension of temporary permits or registrations pending hearing.

Any temporary permit or temporary registration issued by the commission pending final action upon an application for a license or registration may, without hearing, be temporarily suspended by the commission pending final determination of a hearing to determine whether to grant or deny such application or to revoke, cancel or suspend such temporary permit or registration if, in the opinion of the commission:

(a) the applicant or prospective licensee has refused to complete the application, or to appear for or complete an interview, or a physical examination as required by section [5.4] **5.5**, *infra,* or otherwise to provide additional facts or evidence requested by the commission to enable it to ascertain whether the application should be granted; or

(b) the temporary permit or temporary registration has been obtained by fraud; or

(c) the continuance of the temporary permit or temporary registration [for such period] is inimicable to the public peace and safety.

1.18 Petition for an order to remove an ineligibility for a license or registration by reason of criminal conviction.

A petition for an order to remove an ineligibility for a license or registration by reason of a criminal conviction pursuant to section 3(b) of article V, section 3(e) of article VI, section 5-j of Part II, and section 5-n (subd. 3, par. [b]) of Part II of the Act, shall be made on forms furnished by the commission. Such petition may be submitted with the application for a license or registration. The petitioner may submit evidence of a pardon for the disqualifying crime in the form of the original or a photocopy of such pardon. Any petitioner who desires to offer evidence to satisfy the commission that he has conducted himself for a period of not less than five years in such manner as to warrant the granting of a license or registration shall attach to his application the original or a photocopy of any certificate of good conduct, official statement, or other form of relief from disabilities arising from the conviction, which may be issued by a **court of competent jurisdiction,** a board of parole, or similar authority, and any other evidence, such as letters of character reference, as he may deem relevant to the granting of a license or registration. The commission may require additional evidence, to be submitted upon forms as may be prescribed by the commission, as it deems necessary.

1.19 (No change.)

1.20 Counsel in commission **interview or** investigation.

In connection with any investigation conducted [pursuant to article IV of the Act] **by the commission,** a person **interviewed or** questioned under oath shall have the right to be accompanied and represented by counsel, except that he shall not be so accompanied

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or represented by counsel who also represents a person who is or who may become the subject of the investigation, unless the commission upon application so authorizes.

1.21 Probationary registrations and licenses.

(a) Any person whose application for a license has been denied or whose license has been revoked, or any person whose application for registration has been denied or whose registration has been revoked and who has never before submitted an application or petition to the commission seeking inclusion in the register after the final order of denial or revocation of registration by the commission, may, upon application to the commission, be granted leave to apply for a probationary registration or license. Any such person whose application for registration has been denied or whose registration has been revoked [subsequent to April 8, 1966] must file his application for a probationary registration [on or before June 30, 1967 or] within one year of the commission's final order of denial or revocation [, whichever date is later]. (For the purposes of this section, petitions for rehearing or reconsideration made substantially contemporaneously with the commission's order of denial or revocation of registration shall not be considered as constituting a prior application or petition to the commission which seeks inclusion in the register.) Any person who is ineligible to apply for probationary registration pursuant to the foregoing provisions of this section may apply to the commission for the removal of his ineligibility so that such person would not be disqualified, because of his previous denial or revocation, from applying for registration upon the next occasion that the commission opens the register pursuant to section 5-p of the Act.

(b) (1) Any person who has been granted such leave to apply for a probationary registration or license shall provide all the information required in the application for such status and shall complete said application pursuant to the instructions therein.

(2) Where any such applicant is recommended for probationary status by another person who is willing to act as his sponsor, such sponsor shall certify in the aforesaid application that he desires to sponsor the applicant, that he agrees to undertake the supervision of the applicant during such probationary period and that he shall use his best efforts to insure the applicant's compliance with the Waterfront Commission Act, the terms and conditions of the probation and all other laws.

(c) (1) Upon receipt of a completed and properly executed application, the staff member designated by the commission to supervise **the** probationary [cases] **case** shall, if appropriate, forward said application to the division of [investigation] **police** of the commission for a preliminary report on said applicant.

(2) After receipt of the preliminary report, the said staff supervisor shall determine whether or not a permit or registration on a probationary status should be granted or denied, and shall submit his recommendation with respect thereto to the commission. If the staff supervisor recommends that a probationary status be granted, he shall also recommend the terms and conditions which he deems appropriate to impose on the probationer, which may include, among others, the following:

(1) That the waterfront employment of the probationer shall be confined to a designated area of the waterfront.

(2) That the business associations of the probationer shall not include certain individuals, associations and/or groups.

(3) That the personal associations of the probationer shall not include certain individuals or groups of individuals.

(4) That the probationer and/or his sponsor shall periodically report to [a designated commission investigator] **the staff supervisor** who shall review the conduct and activity of the probationer.

(d) (1) If, in the commission's opinion, granting of probation is warranted, the commission shall grant such probation for a period not exceeding six months upon such appropriate terms and conditions.

(2) The staff supervisor shall inform the applicant and the applicant's sponsor, if any, of the commission's action and of the terms and conditions imposed upon the applicant during the period of probationary status. To grant probationary status, the order denying the probationer's application or revoking his registration or license shall then be amended so as not to be effective until further order of the commission.

(3) If the prospective probationer accepts the terms and conditions imposed, the probationer shall report personally at a time designated [by] **to** the staff supervisor [to the commission investigator assigned to the probationer]. In addition to such periodic reports by the applicant, the sponsor of the applicant, if any, shall make periodic reports at times designated [by] **to** the staff supervisor [to the commission's investigator regarding his supervision of the probationer].

(e) If during the six month period of probation the commission does not receive any information indicating that the probationer has violated any of the provisions of the [Waterfront Commission] Act or any of the terms and conditions imposed or any other laws, [the commission investigator] **the staff supervisor** assigned to review the conduct of the probationer shall, immediately prior to the expiration of the six month probationary period, [forward his report concerning the probationer to the staff supervisor. Upon receipt of such report by the staff supervisor, he shall] determine and recommend to the commission whether to terminate the probationary status or whether to continue it for an additional six month period. The same procedure shall be followed upon the expiration of any additional probationary periods.

(f) If the staff supervisor shall receive information indicating that the terms and conditions of probation have been violated by the probationer, or that the probationer has violated any of the provisions of the Waterfront Commission Act or any other laws, the staff supervisor shall, upon receipt of appropriate evidence of such violation, recommend that a hearing be held to determine whether the probationary terms and conditions, or whether any of the provisions of the Waterfront Commission Act or any other laws, have been violated by the probationer.

(g) If the staff supervisor's recommendation for a hearing is approved, he shall give the probationer sufficient notice of the time and place of said hearing and of the issues to be considered at such hearing. The hearing shall be conducted by a person designated by the commission, who shall have the authority and powers of [a hearing officer] **an administrative judge** under section 6.9 [of this Title]. The probationer shall have an opportunity to appear at such hearing and may be assisted or represented by counsel or any qualified person, including the probationer's sponsor, and shall be so advised in the notice of hearing. At the hearing, the probationer may testify in his own behalf and may present witnesses in his own behalf. If the alleged violations to be heard are of such a nature that the commission is of the opinion that the continuance of the probationary status pending the outcome of the hearing is inimical to the public peace or safety, the commission may order the immediate suspension of the probationary registration or license pending final determination of the hearing.

(h) After the conclusion of the hearing, the person conducting the hearing shall make such findings as he deems appropriate upon the issues contained in the notice of hearing, and shall submit such findings to the commission, together with his recommendation for revocation or continuance of the probationary status upon any additional terms or conditions as he may deem appropriate.

(i) The commission shall determine, upon consideration of the findings and recommendations and any other pertinent information that may be submitted or received, whether the probationary status shall be revoked or continued, and, if continued, whether any additional terms and conditions of probation shall be imposed.

[1.22 Medical examination requirement for final processing of application.

No application for initial inclusion in the longshoremen's register as a longshoreman or as a checker shall be finally processed until the applicant furnishes the commission with such facts and evidence as shall establish that he completed and successfully passed a medical examination to qualify persons for waterfront employment approved by the commission and administered by a medical clinic or medical

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center established jointly by employers of longshoremen and checkers and a labor organization representing longshoremen and checkers.]

[1.23] **1.22** (No change in text.)

[1.24] **1.23** Access to records.

(a) The records of the commission shall be made available for public inspection and copying, except that access may be denied as to records or portions thereof which:

(1) are specifically exempted from disclosure by State or Federal statute;

(2) if disclosed, would constitute an unwarranted invasion of personal privacy;

(3) if disclosed, would impair present or imminent contract awards or collective bargaining negotiations;

(4) are trade secrets **or are submitted to the commission by a commercial enterprise or derived from information obtained from a commercial enterprise** or are maintained for the regulation, supervision or licensing of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise;

(5) are compiled for law enforcement or official investigatory purposes when their disclosure would interfere with law enforcement investigations or judicial, licensing, registration or disciplinary proceedings or hearings, or deprive a person of a right to a fair trial or hearing or impartial adjudication, or identify a confidential source or disclose confidential information relating to a criminal, licensing, registration or disciplinary investigation, or reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(6) if disclosed, would endanger the life or safety of any person;

(7) are interagency or intraagency materials other than statistical or factual tabulations of data, instructions to the staff of the commission that affect the public, or final commission policy or determinations; or

(8) are examination questions or answers which are requested prior to the final administration of such questions; **or**

(9) are computer access codes.

(b) Requests for inspection or copying of the records of the commission shall be made to the secretary of the commission upon a form prescribed by the commission and shall contain sufficient information to identify the particular record sought. Such requests shall be made either:

(1) in person during regular business hours at the commission's main offices at [150 William Street, New York, New York 10038] **42 Broadway, New York, New York 10004]; or**

(2) by mailing such request, postage prepaid, to Secretary, Waterfront Commission of New York Harbor, at the address in paragraph (1) of this subdivision.

(c) Upon receipt of a request, the secretary shall promptly determine whether or not the records requested can be made available and will notify the person making the request of such determination. If the request is granted, such person shall also be notified where and when the records will be made available. The commission will provide an opportunity for inspection and copying of the records at a time and place it deems feasible.

(d) The records may be inspected only under the supervision of the secretary of the commission, or such other officer or employee as may be designated by the secretary, in the commission's office during regular business hours or at such other times or places as the secretary deems convenient.

(e) Each request must be responded to within 10 business days of the receipt thereof, with reasons being given for denial of access or copying or a statement of the time and place when the record request will be made available. Any person denied access to a record of the commission by the secretary of the commission may, within 30 days, file an appeal in writing from such denial with the commission's general counsel. Such appeal may be accompanied by a memorandum in support thereof setting forth the reasons why the appellant is entitled to access to the record requested. Such appeals shall be decided by the general counsel. If the appeal is denied, the reasons therefor shall be explained fully in writing within seven business days of the date on which such appeal is received by the general counsel.

(f) Documents which are to be copied will be copied by the commission, if practicable, and the person requesting a copy will be charged a fee [equal to the commission's cost, but no less than] **of** 25 cents for each page [of the first 10, 15 cents for each page of the second 10, and 10 cents for each additional page] **not exceeding eight and one-half by fourteen inches**. If it is not practicable for the commission to copy such documents, they will be copied commercially and the person requesting the copy will be charged a fee equal to the commission's cost for such commercial reproduction. A fee of $2 will be charged for certification by the secretary of the commission as to the authenticity of any document, or that a record of which the commission is legal custodian cannot be found. In the event a search for records requested requires more than one half hour, a search fee will be charged at the rate of not less than $5 per hour or any part thereof, per person assigned to such search. All such fees shall be paid by the person making the request in cash, certified check or bank cashier's check, in advance or at the time of the delivery of any record for inspection or copies of any records or certificate referred to in this subdivision.

1.24 Service of legal papers upon the commission.

All legal process and papers shall be served upon the commission in New York at 42 Broadway, New York, New York 10004, 14th floor, and in New Jersey at the commission's employment information center, 117 Tyler Street, Port Newark, New Jersey 07114.

PART 2

PIER SUPERINTENDENTS AND HIRING AGENTS

Section 2.1 (No change.)

2.2 Persons required to be licensed as pier superintendent **and hiring agents.**

(a) A person will be considered a "pier superintendent" whenever:

[(a)] **(1)** his work is performed at a pier or other waterfront terminal and includes the supervision, directly or indirectly, of the work of [longshoremen] **registrants** employed by his employer or any other person in the course of supervision of the pier or terminal or its cargo handling operations; and

[(b)] **(2)** he is employed by a carrier of freight by water or a stevedore, either directly or indirectly through a subsidiary or parent corporation of, or a contractor with, either of them.

(b) A person will be considered a "hiring agent" whenever he, on behalf of a carrier or freight by water or a stevedore or on behalf of any other person, shall select any registrant for employment. The term "select any registrant for employment" shall include selection of a person for the commencement or continuation of employment as a registrant, or the denial or termination of employment as a registrant.

2.3 through 2.5 (No change.)

2.6 Licensing for more than one employer at single pier; employment by one employer at several piers.

No person will be licensed as a pier superintendent or hiring agent for more than one employer, except (a) at a single pier or waterfront terminal or (b) where the employers are licensed as stevedores pursuant to section 3.2 **(a)(2)** [[subd. (a), par. (2)]] of Part 3 hereof and are affiliated corporations with common officers and a common board of directors. A licensed pier superintendent or hiring agent may act for one employer at more than one pier or waterfront terminal, and a single application will be sufficient for this purpose.

2.7 Issuance and delivery of license.

Upon the approval of an application, the commission will issue and deliver a license to the pier superintendent or hiring agent by transmitting the license [form] to the applicant (employer) who shall be authorized to deliver it to the licensee upon the commencement of this employment.

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2.8 Identification to be carried by licensee; identification to be returned to commission when required.

Any card, badge or other means of official identification issued by the commission to any licensed pier superintendent or hiring agent shall be carried by the licensee on his person at all times when he is at work or at any pier or other waterfront terminal. Any such card, badge or other means of official identification shall be returned to the commission promptly upon request and when otherwise required by [this Chapter] **these Regulations.**

2.9 Participation by any person other than employer in identification or selection of pier superintendent, hiring agent or other person authorized to participate in hiring prohibited; **employer prohibited from solicitation.**

(a) No person except the employer shall participate in any way, directly, or indirectly, in the identification, selection or designation of a person for employment as a pier superintendent, hiring agent or other person designated pursuant to section [7.38] **7.44**, *infra*. No person shall use, or attempt or threaten to use, any force, violence or restraint; or inflict or attempt or threaten to inflict any injury, damage, harm or loss; or coerce, or attempt to coerce, by threat or discrimination, violence or economic reprisal; or in any other way practice intimidation upon or against any employer in order to induce or compel said employer to select for or retain in employment any person as a pier superintendent, hiring agent or other person designated pursuant to section [7.38] **7.44**, *infra*. No person shall prevent, attempt to prevent, or otherwise interfere with the free exercise of discretion by any employer in selecting for or retaining in employment any person as a pier superintendent, hiring agent or other person designated pursuant to section [7.38] **7.44**, *infra*. No person shall pay or give, or offer or agree to pay or give any valuable consideration to any person for the purpose of directly or indirectly influencing the discretion of any employer in selecting for or retaining in employment any person as a pier superintendent, hiring agent or other person designated pursuant to section [7.38] **7.44**, *infra*.

(b) No employer shall receive any benefit from any person for the purpose of directly or indirectly influencing the discretion of the employer in selecting for or retaining in employment any person as a pier superintendent, hiring agent or other person designated pursuant to section 7.44, *infra*.

2.10 through 2.14 (No change.)

PART 3
STEVEDORES

Section 3.1 (No change.)

3.2 Persons required to be licensed as stevedores; persons not required to be licensed as stevedores.

(a) A stevedore license is required by any person (other than an employee) who is engaged under a contract or other arrangement with a carrier of freight by water or a licensed stevedore **or, with respect to subdivision (a)(2) and (a)(3) below only, any person within the meaning of that term contained in Part II, §5-a (6)(c) of the Act (1969 amendments))** (including a parent corporation or a subsidiary corporation of such carrier or licensed stevedore **or "any person"**):

(1) in the movement of waterborne freight carried or consigned for carriage by such carrier on vessels of such carrier berthed at piers, on piers at which such vessels are berthed or at other waterfront terminals, or to provide clerking and checking services in connection therewith; or

(2) to perform all or any part of [cooperage, carpentry, maintenance or other related] **labor or** services incidental to the movement of waterborne freight **on vessels berthed at piers, on piers or at other waterfront terminals (including marine terminals), including, but not limited to, cargo storage or warehousing, cargo repairing, marine carpentry, strapping, lashing, chocking, coopering, weighing, scaling, cargo inspection and sampling, maintenance, mechanical, container or equipment repair, crane maintenance and repair, tire repair, vehicle preparation, export packing, labeling, cleaning and maintenance services, horse and cattle fitting and grain ceiling**[. A license issued under paragraph (2) of subdivision (a) of this section shall be restricted to the performance of such cooperage, carpentry, maintenance or other related services]**; or**

(3) to perform labor or services involving, or incidental to, the movement of freight into or out of containers (which have been or which will be carried by a carrier of freight by water) on vessels berthed at piers, on piers or at other waterfront terminals.

(4) a license issued under paragraph (2) or (3) of this section shall be restricted to the performance of the services contemplated by said paragraph.

(b) A stevedore license shall not be required:

(1) by any person engaged exclusively in moving by means of floating mechanical equipment bulk cargo consisting of a single commodity loaded or carried without wrappers or containers and delivered by the carrier without transportation mark or count; or

(2) by any person who is not principally engaged in the movement of waterborne freight and who on occasion moves waterborne freight for or on behalf of a carrier of freight by water or a stevedore, exclusively by means of mobile land-based cranes not affixed to a pier or terminal with capacity of at least 20 tons, or exclusively by means of floating mechanical equipment; or

(3) by any person who furnishes such equipment as set forth in paragraph (2) **above** to move waterborne freight to a carrier of freight by water or stevedore by lease, rental or otherwise.

(c) A carrier of freight by water shall not require a stevedore license even though it may perform all or part of the services for which a stevedore license would be required when performed by any other person, provided that such services are performed on its own account, or on account of a parent corporation or a subsidiary corporation of such carrier, or as accommodation, not in the regular course of its business, at its own pier for another carrier of freight by water, or as part of its services for another carrier of freight by water for which it is a general agent.

3.3 Freight excluded from definitions of waterborne freight.

For the purposes of article VI of the Act and Part 3 of [this Chapter] **these Regulations, waterborne freight** shall not include freight loaded within the Port of New York District upon motor vessels not in excess of 115 foot length.

3.4 through 3.6 (No change.)

3.7 Issuance and display of license.

Upon the approval of an application, the commission will issue and deliver a stevedore license which shall indicate thereon the type of stevedoring service authorized to be performed and which shall be prominently displayed at the licensee's principal place of business within the Port of New York District. The commission will issue the following types of stevedore license:

(a) a license for the performance of general stevedoring service, including clerking and checking services;

(b) a license restricted to the performance of all or any part of cooperage, carpentry, maintenance or other related services incidental to the movement of waterborne freight **including those enumerated in sections 3.2(a)(2) or (3).**

3.8 (No change.)

3.9 Licensee to maintain books and records.

(a) Every licensed stevedore shall maintain a complete set of books and records containing**: (1)** a true and accurate account of the licensee's receipts and disbursements arising out of its activities within the Port of New York District **and (2) records reflecting the names, waterfront numbers and the places of employment of employees, including but not limited to, pier location, vessel name, warehouse, shed or other location, and dates and times of employment.**

(b) All books and records enumerated in (a) above shall be available during business hours for inspection by the commission and its duly designated representatives until the expiration of the fifth calendar year following the calendar year during which occurred the transaction or labor performed recorded therein.

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3.10 Records of disbursements.

Every licensed stevedore shall comply with the following:

(a) Every disbursement for goods or services in the amount of [$50] **$100** or more shall **show the account to be charged and shall** be supported by a voucher or other [written record] **paid receipt** giving a description of the goods or services, [the name of the person in authority who made or authorized the disbursement,] the name of the payee, the amount[,] **and** the date [and the account to be charged].

(b) Every disbursement for goods or services in an amount less than [$50] **$100** shall be supported by at least a signed petty cash slip **or other written record** describing the disbursement.

(c) Every disbursement in the amount of [$50] **$100** or more for travel shall be supported by a voucher or other [written record] **paid receipt** which shall state who did the travelling, the place travelled to, the date, and the amount disbursed.

(d) Every disbursement in the amount of [$50] **$100** or more for entertainment shall be supported by a voucher or other [written record] **paid receipt** which shall state who did the entertaining, the place and date of the entertainment, the names of the persons entertained and the amount disbursed.

(e) Every disbursement for travel or entertainment in an amount less than [$50] **$100** shall be supported at least by a signed petty cash slip **or other written record** describing the disbursement.

(f) Every disbursement in the amount of $25 or more for a gift or gratuity shall be supported by a voucher or other written record which shall show the name of the person in authority who made or authorized the disbursement, the name of the person who received it, the amount, date, and the business or other purpose for the gift or gratuity.

3.11 through 3.14 (No change.)

PART 4
LONGSHOREMEN [AND], CHECKERS, AND
TELECOMMUNICATIONS SYSTEM CONTROLLERS

Section 4.1 Longshoremen [and], checkers, **and telecommunications system controllers** required to be registered; employment of longshoremen [and], checkers, **and telecommunications system controllers** not registered prohibited.

No person shall act as a longshoreman or as a checker within the Port of New York District unless at the time he is included in the longshoremen's register as a longshoreman or checker, respectively, and no person shall employ another to work as a longshoreman or checker within the Port of New York District who is not so included in the longshoremen's register. **No person shall act as a telecommunications system controller within the Port of New York District unless at the time he is registered by the commission as such, and no person shall employ another to work as a telecommunications system controller within the Port of New York District who is not so registered by the commission.**

4.2 Persons required to be registered as longshoremen; persons not required to be registered as longshoremen.

(a) Inclusion in the longshoremen's register as a longshoreman is required for any person:

(1) who is employed to handle waterborne freight by a carrier of freight by water or by a stevedore at a pier or other waterfront terminal, including, without being limited to, gang foremen, dock gang foremen, headers, gangwaymen, winchmen, dockmen, holdmen, terminal labor operators of mechanical equipment, sorters and baggage porters, or

(2) who is employed by a carrier of freight by water or by a stevedore, physically to perform labor or services incidental to the movement of waterborne freight on vessels berthed at piers, on piers or at other waterfront terminals **(including marine terminals within the meaning of the Act)**, including, without being limited to, [cargo repairmen, coopers, general maintenance men, mechanical and miscellaneous workers, horse and cattle fitters, grain ceilers and marine carpenters,] **cargo storagemen and warehousemen, cargo repairmen, marine carpenters, container loaders and strippers, lashers, chockers, coopers, weighers, scalers, cargo inspectors and samplers, trailer interchange inspectors, maintenance, mechanical, container or equipment repairmen, crane maintenance men and repairmen, tire repairmen, vehicle preparers, export packers, labelers, cleaning and maintenance personnel, horse and cattle fitters and grain ceilers,** or

(3) who is indirectly employed by a carrier of freight by water or by a stevedore, through a subsidiary or parent corporation of, or a contractor with, either of them, physically to perform the labor or services described in paragraph (2) above, or

(4) who is employed by any person for work at a pier or other waterfront terminal physically to move waterborne freight to or from a barge, lighter or railroad car for transfer to or from a vessel of a carrier of freight by water which is, shall be, or shall have been berthed at the same pier or other waterfront terminal, **or**

(5) who is employed by any person, other than by a carrier of freight by water or by a stevedore, to perform labor or services involving or incidental to the movement of freight at a location in a marine terminal within the meaning of the Act.

(b) inclusion in the longshoremen's register as a longshoreman is not required for:

(1) jobs limited to the handling of liquid cargoes in bulk in tanks **(such as, but not limited to, fuel oils, petroleum or orange juice)**, or carriage by barge of bulk cargoes consisting of a single commodity (such as, but not limited to, **cement, gravel,** coal, grain or ore) loaded or carried without wrappers or containers or limited to the handling of cargoes transported from one point to another point within the Port of New York District, or

(2) any person who is regularly engaged in the performance of labor or services not covered by subdivision (a) of this section and who is only incidentally engaged in the performance of labor or services covered by said subdivision (a) where permission therefor has been previously obtained from the commission, or

(3) persons who are regularly employed to perform labor or services not covered by subdivision (a) of this section and who are assigned by such employer to the performance of labor or services covered by said subdivision (a) only to meet special or emergency needs for the protection of the public health or safety where approval therefore has been previously obtained from the commission.

[4.4] **4.3** Checkers required to be registered.

Inclusion in the longshoremen's register as a checker is required for any longshoreman, including, but not limited to, a timekeeper, checker or clerk, who is employed to engage in direct and immediate checking of waterborne freight or of the custodial accounting therefor or in the recording or tabulation of the hours worked at piers or other waterfront terminals by natural persons employed by carriers of freight by water or stevedores.

4.4 Longshoremen's Register; division into sections; designation and sponsorship of "1969 Amendment" longshoremen.

(a) A longshoremen's register shall be maintained in the offices of the commission. Copies shall be kept and exhibited at each commission employment information center.

(b) The register shall be divided as follows:

(1) A "deep-sea" register which shall include all persons registered by the commission as longshoremen and checkers except those persons registered as longshoremen pursuant to the 1969 amendments to the Act (N.Y. Laws 1969, c.953; N.J. Laws 1969, c.128.)

(2) An "A" or "1969 amendment" register which shall include all persons registered by the commission as longshoremen pursuant to the 1969 amendments to the Act (N.Y. Laws 1969, c.953; N.J. Laws 1969, c.128).

(c) No application shall be accepted from any person seeking inclusion in the "deep-sea" register unless the commmission at such time has determined to accept such applications.

(d) No application shall be accepted from any person seeking inclusion in the "A" register unless that person is sponsored for employment by a "stevedore" or by "any person", within the meaning of those terms contained in the 1969 amendments to the Act (N.Y. Laws 1969, c.953; N.J. Laws 1969, c.128).

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4.5 Telecommunications system controllers (TSC) required to be registered.

Registration as a telecommunications system controller is required of any person employed by the association representing employers of longshoremen and checkers and of the labor organization representing longshoremen and checkers in the Port of New York District, or a joint board of such association and labor organization, who participates in the operation of the telecommunications hiring system (THS). An applicant for registration as a telecommunications system controller must be sponsored by the association representing employers of longshoremen and checkers and the labor organization representing longshoremen and checkers in the Port of New York District, or by a joint board of such association and labor organization. Registration as a telecommunications system controller shall terminate upon the registrant's cessation of employment.

[4.3] **4.6** Application for emergency use of persons not registered.

An application for approval under paragraph (3) of subdivision (b) of section 4.2 shall be made to the commission by an employer in writing, who shall certify as follows:

(a) that an emergency exists involving the protection of the public health or safety, setting forth the facts and details of such emergency for each ship;

(b) that only regular employees of his company will be used for this purpose;

(c) that no one will be used who has been denied registration or whose registration has been previously revoked by the commission, or is under present suspension;

(d) that no one will be used who, to the best knowledge of the employer, has a criminal record;

(e) that the employer will maintain accurate records of the names of persons so used and their time and place of assignment;

(f) that such records will be available for inspection by commission personnel at the direction of the executive director in the event such records become necessary for an investigation conducted by the commission or other law enforcement agency;

(g) that anyone so used by the employer will be removed immediately at the request of the executive director.

[4.5] **4.7** Application for registration.

An application for registration as a longshoreman [or], checker **or telecommunications system controller** shall be made on forms furnished by the commission and may be filed at the main administrative offices of the commission or at [any] **a designated** employment information center. [Every applicant shall present for examination any United States Coast Guard port security card issued to him.]

[4.6] **4.8** (No change in text.)

[4.7] **4.9** Additional information to be furnished when required.

In addition to the information required by the application form, the commission may require the applicant to produce such further facts and evidence as may be necessary to **establish the identity of such person and to** determine whether registration should be granted.

[4.8] **4.10** Identification to be carried by registrant; identification to be returned to commission when required.

Any card, badge or other means of official identification issued by the commission to any registrant shall be carried by the registrant on his person at all times when he is at work or at any pier or waterfront terminal. Any such card, badge or other means of official identification shall be returned to the commission promptly upon request and when otherwise required by [this Chapter] **these Regulations.**

[4.9] **4.11** (No change in text.)

[4.10] **4.12** (No change in text.)

[4.11] **4.13** False compensation claims prohibited.

No person registered by the commission shall make a false statement for the purpose of obtaining any benefit or payment under any state's **workers'** compensation law or under the Federal Longshoremen and Harbor Workers Compensation Act. Any violation of this section shall be deemed by the commission, in the case of a checker, to constitute an act which is inconsistent with the possession of good character and integrity under section 5-n of the Waterfront Commission Act, and, in the case of a longshoreman, to constitute the longshoreman a danger to the public peace or safety under article VIII of the [act] **Act.**

PART 5
PORT WATCHMAN
GENERAL PROVISIONS

Section 5.1 Port watchman defined.

(a) A *port watchman* shall mean any person employed directly or indirectly, by contract or other arrangement, by the operator of a pier or other waterfront terminal, or by a carrier of freight by water, to perform services as a guardian or protector of property on any pier or other waterfront terminal. Port watchman shall be classified and designated as follows:

(1) Pier guard. A watchman, roundsman, [detective,] gateman, guard, **inland guard,** or any person performing similar services[; and]**. For purposes of this part, an inland guard is a guardian or protector of property at any warehouse, depot or other terminal, other than a pier, whether enclosed or open, which is located in a marine terminal in the Port of New York District and any part of which is used by any person to perform labor or services involving, or incidental to, the movement of waterborne freight or freight.**

(2) Pier security offficer. A security officer, supervisor, dispatcher or any other person, a substantial part of whose services, performed at piers or other waterfront terminals, includes the supervision, selection or assignment of port watchmen engaged in the protection of property on any pier or other waterfront terminal.

(b) Persons employed exclusively as protectors or guardians of persons (as distinguished from property) or exclusively in the protection or guarding of ships of vessels not included in the definition of *carrier of freight by water,* or cargo not included in the definition of *waterborne freight,* or for work on a pier or waterfront terminal not used for waterborne freight, shall not be deemed to be a pier guard or a pier security officer and shall not be required to obtain a license from the commission.

5.2 (No change.)

5.3 Application for license.

(a) An application for a license to act as a pier guard or a pier security officer shall be made under oath on a form approved and furnished by the commission and shall include:

(1) the full name, residence, business address (if any), place and date of birth and social security number of the applicant;

(2) the present and previous occupations of the applicant, including the places where he was employed and the names of his employers;

(3) the citizenship of the applicant and, if he is a naturalized citizen of the United States, the court and date of his naturalization;

(4) with respect to pier security officers **and inland guards,** a certification from an employer of port watchmen that such employer will **sponsor and** employ the applicant as a pier security officer **or inland guard;** and

(5) such further facts and evidence as the commission may deem appropriate to enable it to ascertain whether the license should be granted.

Each application shall be accompanied by two photographs (2″ × 2″) and two sets of classifiable, authenticated fingerprints of the applicant, upon a record identification form to be furnished by the commission.

(b) Pending final action on an application made for such license, the commission may issue a temporary permit to any applicant. Any such temporary permit may be issued under such terms and conditions as the commission may prescribe and shall be valid for a period to be fixed by the commission not in excess of six months.

5.4 (No change.)

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5.5 Medical examination.

Any licensee, when the commission requires, and every applicant shall submit to a medical examination to be conducted by a licensed physician [designated] **approved** by the commission. Such examination shall include the recording of a complete medical history and any appropriate laboratory procedures which the physician may deem necessary for the purposes of this section. In lieu of such examination, the commission may accept the report of a medical examination conducted by a medical clinic or medical center which has been previously approved by the commission. **The commission may, in its discretion, defer the medical examination of an inland guard for a period of six months from the date that the inland guard receives a temporary permit as a pier guard.**

5.6 Physical fitness standards.

An application for a license as a pier guard shall not be granted and the license or temporary permit of any person required to meet the physical standards pursuant to section 5.4 of this Part shall be cancelled unless the applicant, licensee or holder of a temporary permit:

(a) is not more than 70 years of age;

(b) has:

(1) hearing corrected to at least 80 percent of normal;

(2) vision corrected to 20/40 in either eye; and

(3) blood pressure of no more than 150/[100] **90** (at rest);

(c) has not had within three years a history of, and is presently free from:

(1) mental illness;

(2) heart disease; and

(3) uncontrolled epilepsy;

(d) is free from:

(1) uncompensated liver disease;

(2) chronic lung disease;

(3) asthma;

(4) active tuberculosis;

(5) uncontrolled or uncontrollable diabetes;

(6) untreated syphilis;

(7) nervous system syphilis;

(8) hydrocele—large (greater than 10 centimeters in greatest diameter);

(9) severe dermatitis;

(10) neuro-muscular disease, such as Parkinson's disease and neuro-sclerosis; and

(11) chronic alcoholism; and

(e) is free of any condition, illness, disease, deformity or psychopathic personality traits, including but not limited to abnormality of weight-height ratio (which shall be determined by utilizing the Metropolitan Life Insurance height-weight table and adding thereto **or subtracting therefrom** weight of not more than 25%), herniae, arthritis, peripheral vascular disease, and addiction and/or habituation to any drug which has psycho-motor effects, which by its nature would make him unable or potentially unable to perform any of the duties of a pier guard, or which might cause his presence upon the waterfront to be hazardous to himself or to endanger the life and property of others.

5.7 (No change.)

5.8 Exemption from medical examination.

(a) No holder of a temporary permit or licensee, who has been previously physically examined by a physician [designated] **approved** by the commission within three years, shall be required to submit to a medical examination pursuant to section 5.5 of this Part, unless specifically required to do so by the commission, if he:

(1) has not been granted a waiver of the physical fitness standards prescribed by this section; and

(2) has not since the time of his prior physical examination been hospitalized or received medical treatment for any condition, illness, disease or deformity as set forth in section 5.6 of this Part.

(b) No holder of a temporary permit or licensee who has been physically examined during the current year by a physician [designated] **approved** by the commission, shall be required to submit to a medical examination pursuant to section 5.5 of this Part, unless specifically required to do so by the commission.

(c) No applicant for a license to act as a pier security officer under section 5.1(a)(2) of this Part shall be required to submit to a medical examination or meet the age requirements of section 5.6 of this Part.

5.9 through 5.11 (No change.)

5.12 Licenses and other official identification.

(a) Upon the approval of the application, the commission will issue a license to the applicant. **Licenses of pier security officers and inland guards will be limited to employment by the sponsoring employer.**

(b) A badge will be issued, or replaced, by the commission to each licensee and holder of a temporary permit except a pier security officer licensed under section 5.1(a)(2) of this Part upon payment of a $10 deposit. Upon written application to the commission by the employer, the commission may issue a gold-colored badge to a licensee or permittee designated as a roundsman upon payment of a $25 deposit. Upon ceasing to function as a roundsman, the licensee or permittee shall surrender the said gold-colored badge to the commission. All badges shall be issued by and remain the property of the commission. The badge will be worn on the outer garment on the left chest so as to be clearly visible at all times during his tour of duty as a pier guard. Under special circumstances, upon application to the commission by the employer, the requirement to wear a badge while on duty may be waived for the licensees named therein.

(c) Any licensee or holder of a temporary permit who, without good cause, does not work as a licensed pier guard for at least one day during any calendar month shall deposit the badge or temporary badge issued him with the commission for safekeeping. A pier guard's badge or temporary badge will be reissued to such person upon his return to work as a pier guard.

(d) The loss of such badge or temporary badge shall be reported by the licensee or holder of a temporary permit to the commission within 24 hours after the loss. Upon proof by affidavit of such loss, a new badge or temporary badge will be issued by the commission.

(e) Each licensee or holder of a temporary permit shall return his license or permit and badge or temporary badge to the commission upon the surrender, suspension, revocation or other termination of such license or permit. Upon such return of the badge or temporary badge, the deposit will be refunded.

5.13 and 5.14 (No change.)

5.15 Records to be maintained by pier guards.

(a) Every pier guard shall keep in a memorandum book an accurate record of each tour of duty. Such book shall be furnished by and remain the property of the commission and shall be returned to the commission when completed or upon the surrender, suspension or termination of the pier guard's license.

[(b) In lieu thereof, such pier guard shall keep an accurate record of his tour of duty in a memorandum book approved by the commission and furnished by his employer. Such memorandum book shall remain the property of the employer and shall be kept as a permanent record by the employer for a period of three years from the date of the last entry therein.]

[(c)]**(b)** Such memorandum book shall be carried by every pier guard while on duty. All entries in such memorandum book shall be in ink.

[(d)]**(c)** Before performing each tour of duty, all pier guards shall enter in their memorandum books their employer, the date, the tour of duty, the pier and their assignment at such pier, and the time of arrival at their post. During the tour they shall enter a full and accurate record of any thefts or attempted thefts of cargo and unusual occurrences during their tour of duty, indicating the time when and to whom reports of these incidents have been made. If there have been no such incidents, the pier guard shall write "Nothing to report" at the end of the tour of duty. At the end of the tour of duty, the pier guard shall also enter the time out and shall sign his full name and license number.

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[(e)]**(d)** All such books shall be available for inspection by the commission at any time.

5.16 (No change.)

5.17 Gate vehicle books.

(a) In addition to any other books or records required to be maintained by pier guards, every pier guard assigned as a gateman or to guard an entrance or exit to any pier or other waterfront terminal shall maintain a "gate vehicle book" or other record to be furnished or approved by the commission, in which he shall record the license plate and gate pass numbers, if any, of all motor vehicles and trailers entering and leaving, other than:

(1) motor vehicles owned, leased or operated by the pier or terminal operator or any licensed stevedore performing services on the pier or terminal;

(2) motor vehicles of persons employed by the pier or terminal operator or a licensed stevedore performing services on the pier or terminal, where a specified parking area has been provided for such persons and the employer maintains an identification list of all such motor vehicles or has provided a sticker or other means of identification to be affixed to all such motor vehicles;

(3) motor vehicles carrying invitees to social affairs on the pier or terminal or aboard vessels, and passengers embarking or disembarking from vessels and/or their guests; or

(4) motor vehicles carrying law enforcement officers or other government officials.

(b) All such gate vehicle [books] **records** furnished by the commission shall remain the property of the commission and shall be available for inspection by the commission at any time; provided, however, such gate vehicle book or record may be furnished by the terminal operator, and shall remain its property, if it is in a form approved by the commission, kept as a permanent record for a period of three years from the date of the last entry therein and is available for inspection by the commission at any time.

5.18 (No change.)

5.19 Standards of conduct.

(a) Any license or temporary permit issued to a pier guard or a pier security officer may be revoked or suspended for such periods as the commission deems in the public interest, or the licensee reprimanded for any act or conduct in violation of the [act] **Act** or [this Chapter] **these Regulations.**

(b) Among other things, failure by a pier guard to adhere to the following standards of conduct, and any terms or condition of his license or temporary permit, will be considered by the commission in determining whether the license or temporary permit should be revoked or suspended. Every pier guard shall:

(1) have in his possession at all times while on duty his license or temporary permit;

(2) wear his Waterfront Commission badge or temporary badge as required by [this Chapter] **these Regulations,** and only in the performance of his duties as a pier guard;

(3) wear a cap or safety helmet as required by [this Chapter] **these Regulations;**

(4) before completing his tour of duty, submit to his immediate superior a detailed written report of any theft or attempted theft of cargo which comes to his attention during such tour;

(5) remain at his assigned post, except when his duties as a pier guard require otherwise or unless otherwise authorized by his superior;

(6) be in a sober condition and refrain from consuming any intoxicating beverage while on duty;

(7) remain awake while on duty;

(8) refrain from smoking or carrying lighted cigarettes, cigars or pipes in prohibited areas;

(9) while on duty, comply with any special requirements of his license or temporary permit to meet the phyiscal fitness standards of section 5.6 of this Part;

(10) while assigned to guard an entrance or exit to any pier or waterfront terminal, check and collect gate passes from all trucks leaving the pier or terminal where gate passes are issued on such pier or terminal;

(11) while assigned to guard an entrance or exit to any pier or waterfront terminal, examine any motor vehicle and its contents where there is reasonable ground to believe that such motor vehicle is carrying merchandise from the pier or terminal without authority;

(12) perform the duties assigned to him in a diligent, conscientious and careful manner; and

(13) keep and maintain his memorandum book as required by [this Chapter] **these Regulations.**

5.20 (No change.)

HIRING OF PIER GUARDS AND PIER SECURITY OFFICERS

5.21 Construction.

(a) Sections 5.21 through 5.34 of this Part, inclusive, are designed to effectuate the purposes of the Waterfront Commission Act, as amended and supplemented and to prevent the circumvention and evasion thereof. In particular, these sections are designed to improve the conditions under which pier guards and pier security officers are employed, to eliminate irregularity of employment, and, in accordance with the public policies of the States of New York and New Jersey, to provide fair and equal employment opportunities by establishing a systematic method of hiring and providing adequate information to pier guards as to availablity of employment opportunities, and to waterfront employers as to the available pier guards within the port.

(b) Section 5.21 through 5.34 of this Part, inclusive, are not designed and should not be construed to be in conflict with the provisions of article XV of the [act] **Act.**

5.22 (No change.)

5.23 Employers subject to regulation.

Any person, including carriers of freight by water and stevedores, any parent or subsidiary thereof, or any person who has a contract with such carrier of freight by water or stevedore to provide or to perform services as a guardian or protector of property on any pier or other waterfront terminal, is subject to the provisions of sections 5.21 through 5.34 of this Part, inclusive**, except when employing inland guards.**

5.24 Establishment of pier guard lists.

(a) Any employer may, in accordance with sections 5.35 through 5.41 of this Part, inclusive, file lists of his regular pier guards and extra pier guards. Each list shall include the name, license number and seniority classification of each man listed.

(b) Any name on any regular list shall not appear on any other regular list filed with the commission.

(c) If such lists are accepted by the commission, copies thereof shall be [conspicuously posted by the commission] **maintained** at the appropriate employment information center.

5.25 (No change.)

5.26 Rejection of lists, replacements and additions.

The commission may reject any list, in whole or in part, or any replacement or addition to any list, if it determines that such list, or part thereof, or any replacement or addition thereto, was not made in conformance with this Part or in accord with the [act] **Act.**

5.27 Removal of men from lists.

Any person may be removed from a list:

(a) at his own request;

(b) at the request of the employer who applied for his listing;

(c) upon [his] **the** suspension or revocation of his license;

(d) where the commission determines that he was not listed in conformance with this Part, or that such removal will further the purposes of the [act] **Act;** or

(e) with respect to regular [and extra] pier guards, for failure, without good cause, to maintain 700 hours of work **if initially employed before December 31, 1978 and 1,000 hours of work if initially employed after January 1, 1979,** in each calendar year.

5.28 (No change.)

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5.29 Reporting employment opportunities.

Each employer shall each day provide the appropriate employment information center with general information of employment opportunities expected to be available the following work day for casual pier guards. Such information shall be [posted] **maintained** in the appropriate employment information center.

5.30 and 5.31 (No change.)

5.32 Employment of casual pier guards.

[(a) A casual pier guard may notify the appropriate employment information center before 6:00 p.m. of his availability for employment for a 12 midnight to 8:00 a.m. or 8:00 a.m. to 4:00 p.m. tour the following day. Between 6:00 p.m. and 7:00 p.m., a representative of an employer or employers shall select, in accordance with sections 5.35 through 5.41 of this Part, inclusive, pier guards for such tours of duty from among pier guards personally present seeking employment and from among those pier guards who have previously notified the appropriate employment information center of their availability.

(b) For employment for the 4:00 p.m. to 12 midnight tour the same day, casual pier guards shall notify the appropriate employment information center of their availability by 1:00 p.m., and between 1:00 p.m. and 2:30 p.m. a representative of an employer or employers shall select in accordance with sections 5.35 through 5.41 of this Part, inclusive, casual pier guards from those personally present seeking employment and from those who have previously notified the center of their availability.]

(a) All casual pier guards must be employed through the appropriate employment information center.

(b) A casual pier guard may notify the appropriate employment information center prior to 1:00 p.m. of his availability for employment for a 4:00 p.m. to 12 midnight tour that day, and prior to 3:00 p.m. of his availability for employment for a 12 midnight to 8:00 a.m. or a 8:00 a.m. to 4:00 p.m. tour the following day. Between 1:00 p.m. and 2:30 p.m. a representative of an employer shall select in accordance with sections 5.35 through 5.41 of this Part, inclusive, pier guards for the 4:00 p.m. to 12 midnight tour that day, and between 3:00 p.m. and 5:00 p.m. pier guards for the 12 midnight to 8:00 a.m. or 8:00 a.m. to 4:00 p.m. tours the following day, from among pier guards who have previously notified the appropriate employment information center of their availability.

(c) A casual pier guard may notify the appropriate employment information center from 12 noon to 3 p.m. on Friday of his availability for employment on Saturday, Sunday or the 12 midnight to 8:00 a.m. or 8:00 a.m. to 4:00 p.m. tours on Monday. After 3:00 p.m. on Friday a representative of an employer shall select, in accordance with sections 5.35 through 5.41 of this Part, inclusive, pier guards for Saturday, Sunday or for the 12 midnight to 8 a.m. or 8 a.m. to 4:00 p.m. tours on Monday, from among pier guards who have previously notified the appropriate employment information center of their availability.

(d) If Monday is a holiday, a casual pier guard may notify the appropriate employment information center from 12 noon to 3:00 p.m. on Friday of his or her availability for employment for a 4:00 p.m. to 12 midnight tour on Monday or the 12 midnight to 8:00 a.m. or 8:00 a.m. to 4:00 p.m. tours on Tuesday. For holidays falling on other weekdays, a casual pier guard may notify the appropriate employment information center prior to 3:00 p.m. on the day prior to the holiday of his availability for employment on the holiday or for the 12 midnight to 8:00 a.m. or 8:00 a.m. to 4:00 p.m. tours for the day after the holiday. After 3:00 p.m. on Friday, if the holiday is on Monday, or after 3:00 p.m. on the day before the holiday, if the holiday falls on another weekday, a representative of an employer shall select, in accordance with sections 5.35 through 5.41 of this Part, inclusive, pier guards for employment on the holiday or for the 12 midnight to 8:00 a.m. or 8:00 a.m. to 4:00 p.m. tours on the day after the holiday from among pier guards who have previously notified the appropriate employment information center of the availability.

(e) A casual pier guard may also make himself available for work at other times in which case he will be added to the availability list in proper seniority order for subsequent hiring. Representatives of employers may select casual pier guards for employment in accordance with sections 5.35 through 5.41 of this Part, inclusive, at other times to meet unforeseen needs.

5.33 Extension of employment for casual pier guards.

The employer may extend the employment of a casual pier guard on a day-to-day basis to complete his original assignment on successive days by notifying the appropriate employment information center[, without any personal reappearance on the part of the casual pier guard at the center].

5.34 Emergency hiring.

When an emergency situation exists which makes it impossible for an employer to comply with the provisions of [this Chapter] **these Regulations** for the employment of a casual pier guard, such employer may employ the casual pier guard without complying with such section, provided he immediately thereafter notifies, in writing, the appropriate employment information center of such hiring and states in detail the circumstances requiring such emergency hiring and the name and license number of any casual pier guard so employed.

PRIORITIES

5.35 Construction of priorities.

In accordance with the provisions of article XV of the Waterfront Commission Act, the following priorities of employment are designed to be consistent with the priorities established in the seniority article of the collective bargaining agreement between the New York Shipping Association and the Port [Watchman's] **Police and Guards** Union. The listing of these priorities shall not be construed to limit in any way the right of the parties to the collective bargaining agreement to alter, modify, amend or otherwise change such priorities or agree upon any other method for the selection of licensed employees by way of seniority, experience, or otherwise.

5.36 and 5.37 (No change.)

5.38 [Employment] **Selection** of casual pier guards.

Qualified casual pier guards shall be selected in accordance with their seniority classification in the industry. **For purposes of section 5.32 of this Part, if two or more casual pier guards have the same seniority, the casual pier guard with the lower commission license number will be entitled to priority in hiring.**

5.39 through 5.41 (No change.)

PART 6

APPLICATION AND REVOCATION PROCEEDINGS

Section 6.1 (No change.)

6.2 (No change.)

6.3 Service of notice of hearing, orders and other communications.

The notice of hearing and all other notices, orders and communications from the commission shall be duly served if enclosed in a properly postpaid wrapper, addressed to the person to be notified or communicated with at the address last given by him in writing to the commission, and deposited, as ordinary mail, in a post office, post office box or mail chute maintained by the United States government, or if such notice, order or communication addressed to such person is delivered to such address by telegram or by registered or certified mail or by an employee or agent of the commission. A certificate by an employee or agent of the commission that such notice, order or communication has in the regular course of the business of the commission been duly dispatched or delivered, in a manner authorized by this section, shall be presumptive evidence of proper service. For the purpose of calculating the time of notice, service shall be considered effected upon the date of delivery to such address; provided that, where service is by ordinary mail, service shall be considered effected the **third** day after the mailing.

6.4 and 6.5 (No change.)

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6.6 Hearings to be public; stenographic records of hearing.

Unless otherwise ordered by the commission in the public interest, application and revocation hearings held by the commission shall be open to the public. Stenographic records of hearings shall be made and transcripts thereof may be furnished to any [party] **person after the conclusion of the hearing** upon payment [to the stenographer of the reasonable] **to the commission of the reproduction** costs thereof as established by [the commission] **section 1.23(f)**. [A transcript or a portion thereof may be furnished to any person having a legitimate interest therein upon application to the commission and payment of the appropriate costs thereof.]

6.7 through 6.11 (No change.)

6.12 Oral argument; briefs.

Oral argument shall be made only before the administrative judge and shall be included in the record of the hearing. [Such oral argument may, in the discretion of the administrative judge, be curtailed, provided that a party shall be given an opportunity to submit his argument in writing.] Briefs as to fact or law [shall] **may** be received and may be required to be submitted. The administrative judge may fix the time within which briefs shall be filed. Briefs received subsequent to such time need not be considered.

6.13 and 6.14 (No change.)

6.15 Petition to reopen hearing.

After the conclusion of a hearing but prior to the making of an order by the commission, a hearing may, upon petition and in the discretion of the administrative judge, be reopened for the presentation of new **or additional** evidence. Such petition to reopen the hearing shall state in detail the nature of the new **or additional** evidence, together with the reasons for the failure to submit such evidence prior to the conclusion of the hearing. The commission may upon its own motion and upon reasonable notice reopen a hearing for the presentation of **new or** additional evidence.

6.16 through 6.19 (No change.)

6.20 Petition for leave to reapply.

Any applicant, not having been issued a temporary permit or registration, who has been denied a license or registration by order of the commission after a hearing or rehearing, and who has not been granted leave to reapply in the said order of denial, may petition the commission for leave to reapply for such license or registration. Such petition shall be in writing on a form to be furnished by the commission and shall be filed with the commission not less than six months after the final determination of the commission made after the hearing or rehearing and not more often than once each year following the said final determination, unless the commission for good cause shown shall otherwise direct. A grant by the commission of a petition submitted under this section for leave to reapply for [registration] **inclusion in the "deep-sea" register** as a longshoreman or checker during any period of time the acceptance of such applications has been suspended under section 5-p of the [Waterfront Commission] Act shall not take effect until such time as the commission shall determine to accept such applications under said section 5-p and shall not entitle the petitioner to any preference or priority in obtaining any such application or in having it processed.

PART 7
HIRING REGULATIONS FOR REGISTRANTS
GENERAL PROVISIONS

Section 7.1 Construction.

(a) This Part is designed to effectuate the purposes of the [Waterfront Commission] Act, as amended and supplemented, [(hereafter referred to as "Act"),] and to prevent the circumvention and evasion thereof. In particular, it is designed to improve the conditions under which waterfront labor is employed, to eliminate irregularity of employment, fear and insecurity, and, in accordance with the public policies of the States of New York and New Jersey, to provide fair and equal employment opportunities, by establishing a systematic method of hiring and providing adequate information to waterfront workers as to the availability of employment opportunities and to waterfront employers as to the available labor supply within the port.

(b) [In addition to provisions concerning the hiring of longshoremen who personally appear at the Waterfront Commission employment information centers for employment, this] **This** Part contains provisions which give waterfront employers the privilege of ordering employees for hire without the personal appearance of such employees at the **commission employment information** centers, on condition that the employers file with the commission lists of persons they regularly employ on their piers and follow the procedures set forth in this Part for the ordering of [such] **their regular and casual** employees.

(c) This Part is not designed and should not be construed to be in conflict with the provisions of article XV of the [act] **Act**.

7.2 Definitions.

As used in this Part:

(a) ***Regular employees*** shall mean employees who, as individuals, are entitled to receive first priority of employment at a particular pier or waterfront terminal or with a particular employer.

[(b) ***Regular employee followers*** shall mean employees who, as individuals, are entitled to receive employment at a particular pier or waterfront terminal after available regular employees are employed.]

[(c)]**(b)** ***Gang*** shall mean a group of longshoremen constituted into a working unit.

[(d)]**(c)** ***Regular gang*** shall mean a gang which is entitled to receive first priority of employment at a particular pier or waterfront terminal.

[(e)]**(d)** ***Regular-extra gang*** shall mean a gang which is entitled to receive employment at a particular pier or waterfront terminal after available regular gangs have been employed.

[(f)]**(e)** ***Extra gang*** shall mean a regular or regular-extra gang not employed on a particular day by the employer listing it as a regular or regular-extra gang.

[(g)]**(f)** ***Voluntary gang*** shall mean a gang established by the commission on its own initiative, where, in its opinion, such action will further the purposes of the Act.

[(h) ***Regular and regular-extra gang followers*** shall mean employees who are entitled to receive first priority of employment as replacements for absent members of such gangs at a particular pier or waterfront terminal.]

[(i)]**(g)** ***Section*** shall mean a geographical division of the port.

[(j)]**(h)** ***Borough or area*** shall mean a geographical division of the port consisting of one or more sections.

[(k)]**(i)** ***New pier*** shall mean any pier or terminal which has not regularly been in operation for the movement of waterborne freight within three calendar years prior to its opening.

[(l)]**(j)** ***Reactivated pier*** shall mean any pier or terminal which has been in operation for the movement of waterborne freight within three calendar years of its reopening, including a newly constructed pier or terminal which has replaced one or more piers or terminals.

(k) ***Telecommunications systems controller (TSC)*** **shall mean a natural person, who is employed by the New York Shipping Association, Inc. and the International Longshoremen's Association, or by a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association, and who participates in the operation of the telecommunications hiring system (THS).**

7.3 Employers **and employees** subject to regulation.

Any person who employs a [registered longshoreman] **person included in the "deep-sea" register** to perform work in his registered capacity **and any person included in the "deep-sea" register** [as set forth in the Waterfront Commission Act is] **are** subject to the provisions of this Part.

7.4 Longshoremen's register.

[A longshoremen's register shall be maintained in the offices of the commission. Copies shall be kept and exhibited at each employment information center.] **The longshoremen's register, as referred to in this Part, only applies to the "deep-sea" register.**

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EMPLOYEE LISTINGS

7.5 Establishment of regular lists [for pre-validation].

(a) Any employer may, in accordance with sections [7.25] **7.29** through [7.36] **7.40**, inclusive, file lists on commission forms designating the pier or waterfront terminal for such list, for:

(1) regular checkers and clerks, [extra] **terminal** labor, [tractor] drivers, coopers, marine carpenters, maintenance men[, chenangoes] and other classifications of regular employees; **and**

(2) regular and regular-extra gangs;

[(3) regular employee followers; and

(4) regular and regular-extra gang followers].

[(b) In addition to such listings, any employer may list employees who do not have a priority right to employment because of the absence of any applicable seniority agreement but who have received from the listing employer at least 12 days' employment during the preceding three-month period. Any such employee may be removed from a list for failure, without good cause, to work pursuant to section 7.14 for the employer listing him for eight days during the preceding calendar month or 80 per cent of the days when persons from his list received employment pursuant to section 7.14 during that month, whichever is the lesser.]

[(c)]**(b)** Unless a variance is granted by the commission, any name on any such list shall not appear on any other list filed with the commission. No list shall contain names of persons to be employed at more than one pier or waterfront terminal unless a variance is granted by the commission.

[(d)]**(c)** If such lists are accepted by the commission, copies thereof shall be conspicuously posted and maintained by the employer on a bulletin board at [the entrance to] the pier or terminal.

7.6 Voluntary gangs.

Voluntary gangs may be established and included in the commission's register of gangs.

7.7 Additions to regular lists.

(a) Before an employer shall add a gang to or fill a vacancy on a regular or regular-extra gang list or fill a vacancy on or enlarge a regular list [established pursuant to paragraph (3) or (4) of subdivision (a) of section 7.5[, [he] **the employer** shall notify [the appropriate] **an** employment information center on commission forms and post a copy thereof on the pier or terminal concerned for a period of not less than seven days. The commission shall also post a notice of such job opportunity in each [appropriate] employment information center.

(b) Any prospective employee seeking such listing shall report to the employer's hiring agent or [his superior] **pier superintendent** at the pier or terminal where the vacancy exists and apply on an application form supplied by the employer and approved by the commission. At the end of the seven-day period of posting, the employer shall forward to the commission copies of all applications received during that period, together with a commission form upon which shall be entered the names and seniority classifications of all persons who applied during that period and a certification by the employer's hiring agent to the effect that all persons who sought such listing were furnished applications and that all applications received have been forwarded to the commission.

(c) [The employer may also file to fill a vacancy for a checker or a maintenance man who has sectional seniority or add to a list of checkers or such maintenance men by selecting from among persons appearing at the appropriate employment information center who are qualified and able to perform the duties of the job, provided the employer:

(1) on a commission form gives the commission at least seven days' advance written notice of the date he intends to make such selection.

(2) posts a copy of such notice of job opportunity at the pier or terminal.

(3) makes his selection in accordance with sections 7.25 through 7.36, inclusive, and

(4) furnishes the commission with the current industry list of all checker applicants with their seniority classifications.

Any such selection in the employment information center shall be at the regular morning hiring time on the date designated in the notice. The employer shall post at the pier or waterfront terminal for a period of 30 days the names of all checkers selected. The commission shall also post for a period of 30 days in the appropriate employment information center the names of all such persons selected. Such selections may only receive permanent approval by the commission after the expiration of the 30-day posting period.] **All applications received by the employer after the seven-day period of posting shall be forwarded immediately to the commission, together with a similar listing and certification. At the time of forwarding applications to the commission, the employer shall also post at the pier or waterfront terminal copies of the forms listing the applicants. Copies of the forms listing the applicants shall also be posted in the appropriate employment information center by the commission. The employer may, after the seven-day period of posting, file to add a gang or fill a vacancy or add to a list from job applicants who have applied for the particular job opportunity contained in the notice and who are qualified and able to perform the duties of the job, in accordance with sections 7.29 through 7.40, inclusive, certifying compliance with the pier posting requirements of this section. The employer shall post at the pier or waterfront terminal for a period of 30 days from the date of filing the names of all persons selected. The commission shall also post for a similar period of 30 days in the appropriate employment information center the names of all such persons selected. Such selections may only receive permanent approval by the commission after the expiration of the 30-day posting period.**

(d) The provisions of this section shall not apply where an employer makes his selection from persons properly listed on any regular list previously filed with the commission for the particular pier or waterfront terminal pursuant to section 7.5, provided the employer:

(1) makes his selection in accordance with sections [7.25] **7.29** through [7.36] **7.40,** inclusive, and

(2) files his selections at the appropriate employment information center on forms furnished by the commission.

(3) [The employer shall post] **posts** at the pier or waterfront terminal for a period of 30 days the names of all such persons selected. The commission shall also post for a period of 30 days in the appropriate employment information center the names of all such persons selected. Such selections may only receive permanent approval by the commission after the expiration of the 30-day posting period. [All applications received by the employer after the seven-day period of posting shall be forwarded immediately to the commission, together with a similar listing and certification. At the time of forwarding applications to the commission, the employer shall also post at the pier or waterfront terminal copies of the forms listing the applicants. Copies of the forms listing the applicants shall also be posted in the appropriate employment information center by the commission. The employer may, after the seven-day period of posting, file to add a gang or fill a vacancy or add to a list from job applicants who have applied for the particular job opportunity contained in the notice and who are qualified and able to perform the duties of the job, in accordance with sections 7.25 through 7.36, inclusive, certifying compliance with the pier posting requirements of this section. The employer shall post at the pier or waterfront terminal for a period of 30 days from the date of filing the names of all persons selected. The commission shall also post for a similar period of 30 days in the appropriate employment information center the names of all such persons selected. Such selections may only receive permanent approval by the commission after the expiration of the 30-day posting period.]

7.8 Replacements for voluntary gangs.

Before a vacancy may be filled in a voluntary gang, the foreman of such gang shall notify **an** [the appropriate] employment information center on commission forms. The commission shall post a notice of such job opportunity in each employment information center for a period of not less than one week. Any person seeking such listing shall apply on commission forms through [the appropriate] **an** employment information center. After the posting for one week, the

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commission shall forward all such job applications to the foreman of the gang. Such vacancy shall be filled by written request signed by a majority of the members of the gang from such job applications in accordance with section [7.25] **7.29** through [7.36] **7.40,** inclusive.

7.9 (No change.)

7.10 Removal of [men] **persons** from lists; **removal of gangs from register.**

(a) Any person may be removed from a list:

[(a)]**(1)** at his own request;

[(b)]**(2)** at the request of the employer who applied for his listing;

[(c)]**(3)** for good cause upon the written request of the majority of the members of a voluntary gang;

[(d)]**(4)** upon his suspension, **revocation** or **other** removal from the longshoremen's register **for a period of more than thirty (30) days. A person so removed may be reinstated to his position on said list upon reinstatement to the longshoremen's register, notwithstanding the provisions of section 7.7**;

[(e)]**(5)** where the commission determines that he was not listed in conformance with this Part, or that such removal will further the purposes of the Act[;]

[(f) for failure, without good cause, to work as a member of the gang with which he is listed at least 80 per cent of the days during the preceding calendar month when his gang received employment;

(g) with respect to regular employees, for failure, without good cause, to work pursuant to section 7.14 for the employer listing him for 12 days during the preceding calendar month or 80 percent of the days when persons from his list received employment pursuant to section 7.14 during that month, whichever is the lesser; or

(h) with respect to regular employee followers and regular and regular-extra gang followers, for failure, without good cause, to receive employment at least 80 per cent of the days during the preceding calendar month when men in his category received employment at his particular pier or waterfront terminal].

[7.11 Removal of gangs from register.]

(b) A gang may be removed from the register of gangs:

[(a)]**(1)** upon the written request of the majority of its members;

[(b)]**(2)** upon the request of the employer who applied for its listing; or

[(c)]**(3)** where the commission determines that such gang was not listed in conformance with this Part, or that such removal will further the purposes of the Act.

[7.12]**7.11** (No change in text.)

HIRING PROCEDURES [FOR REGISTERED PERSONNEL]

7.12 Establishment of Telephonic Hiring System.

In addition to other provisions concerning the ordering of persons without their personal appearance at an employment information center, the commission, in the implementation of a telecommunications hiring system (THS) through which longshoremen and checkers may be hired and accept employment without any personal appearance, has designated an employment information center, known hereafter as THEIC, located at 2 World Trade Center, New York, New York.

7.13 Reporting employment opportunities.

Each employer shall each day before [4:30] **2:30** p.m. provide the [appropriate employment information center] **THEIC** with **a list of the number of gangs and other classifications prevalidated and** general information of employment opportunities expected to be available the following workday for each classification of registered personnel [together with a list of the number of gangs and other classifications prevalidated]. Such information shall be posted [in the appropriate] **or otherwise made available in each** employment information center [and made available to all employment information centers].

7.14 Pre[-]validation ordering from regular lists.

An employer may order employees on regular lists [without the personal appearance of such employees at the employment information centers] as follows:

(a) not later than [3:00] **1:45** p.m. each day, the employer shall notify the [employment information center] **THEIC** as to which of [his] **its** regular and regular-extra gangs **and list employees** [he] **it** intends to order during the following 24 hour period **and employees and gangs so ordered may report directly to the pier or terminal for work**;

(b) not later than 4:00 p.m. each day, the employer shall indicate [on the lists posted] on the bulletin board at the pier or terminal those employees and gangs [to be] ordered for employment during the following 24 hours;

[(c) not later than 4:30 p.m. each day, the employer, on commission forms, shall notify the employment information center of those employees and gangs whom he is ordering for employment. Employees and gangs so ordered may report directly to the pier or terminal for work without appearing personally at an employment information center;]

[(d)]**(c)** when employment is anticipated for a Saturday, Sunday, Monday, or a holiday falling on any such day, the requirements of subdivisions (a)[,] **and** (b) [and (c)] hereof shall be fulfilled on the preceding regular working day; [except when men are ordered to continue from Saturday to Sunday, the requirements shall be fulfilled not later than 3:00 p.m. on Saturday;]

[(e)]**(d)** when employment is anticipated for a day following any holiday, the requirements of subdivisions (a)[,] **and** (b) [and (c)] hereof may be fulfilled on the last regular working day preceding the holiday;

[(f) after 5:00 p.m. but not later than 6:00 p.m., individual members of regular and regular-extra gangs may be ordered for the following day as dock and terminal employees or as replacements in gangs in the same manner as regular employees in accordance with sections 7.25 through 7.36, inclusive;]

[(g)]**(e)** where an employer cancels the employment of an employee or a gang, [he] **it** shall notify the [employment information center] **THEIC** no later than [the time] **7:00 a.m. on the day** the employee or gang was to report for employment.

7.15 "Quick registration"; weekend casual checkers; limitations.

(a) After satisfying the requirements of section 7.14(a) and prior to 2:30 p.m., the employer may order ("quick register") individual members of its gangs or lists, not previously validated for the following day, as dock or terminal employees or as replacements in gangs in accordance with sections 7.29 through 7.40, inclusive;

(b) A checker may telephone the THEIC on Friday between 9:00 a.m. and 10:00 a.m. to make himself available on the checker voluntary list for weekend employment at the North River Passenger Terminal. A hiring agent may employ by "quick registering," on Friday before 2:30 p.m., a casual checker who has made himself so available;

(c) Except for the provisions of (b) above, the "quick registration" procedure may only be used to hire list or gang members for employment at their own pier or terminal. The procedure is not to be used for ordering or extending other registrants unless written permission is granted by the commission;

(d) Not later than 4:00 p.m. each day, the employer shall indicate on the bulletin board at the pier or terminal those employees who have been "quick registered" for employment during the following 24 hours.

[7.15]**7.16** Recall of regular and regular-extra gangs.

An employer may retain a regular or regular-extra gang for employment, even though the gang has been previously released by such employer and ordered for employment by another employer, provided the regular employer certifies to the commission that:

(a) circumstances have arisen which prevent the completion of the work assignment for [him] **the regular employer**; and

(b) [he] **the regular employer** has notified the prospective employer at least one hour in advance of the time the gang was to report to the prospective employer that [he] **it** intends to retain [his] **its** gang until the work assignment is completed.

[7.16]**7.17** Ordering of [extra and voluntary] **additional gangs.**

(a) Each gang not reported pursuant to subdivision (a) of section 7.14 shall be posted as a gang not previously ordered and may be

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ordered as an [extra] **additional** gang **(including voluntary or extra gangs)** [unless prior to 3:00 p.m. the gang foreman notifies the appropriate employment information center that his gang is not available for employment during the following 24 hours].

(b) [Between 3:00 and 4:00 p.m.] **Prior to 2:00 p.m.** a hiring agent shall personally [select] **order** [extra] **additional** gangs from the gangs not previously ordered [at the] **through the** [employment information center] **THEIC** and **so** notify the center staff [of his selection]. [The foreman of a gang or his designee shall be personally present at the employment information center to accept or reject employment offered his gang. If the foreman, or his designee, is unable to appear personally, a member of the center staff shall call him by telephone at such place as he may have specified. The hiring agent shall offer, in the presence of the center staff, employment to the gang foreman or his designee. The hiring agent shall, on commission forms, order for employment those gangs which have accepted employment.]

(c) An [extra] **additional** gang may be continued in employment in the same manner as the employer's regular and regular-extra gangs pursuant to section 7.14.

[(d) To employ an extra gang to begin work later the same day, the employer shall make such selection between 3:00 p.m. and 4:00 p.m.]

7.18 Extension of employment; **use, procedure and prohibited practices.**

(a) When a person employed pursuant to sections [7.17] **7.19 and 7.20** is required by his employer for successive days to complete his original assignment, the employer may extend the employment on a day-to-day basis, but not beyond Friday of the same week[, without any personal reappearance on the part of the employee at the center]. Where the original assignment is not completed by Friday, the employer may continue such employment **for Saturday, and, if necessary, from Saturday to Sunday only** by **receiving specific written** [special] permission of the commission **for each said day.**

(b) Not later than [4:00] **3:00** p.m. each day the employer shall, on commission forms posted on the bulletin board at the pier or terminal, indicate those persons whose employment [he] **it** is extending for the following 24 hours and shall furnish such names to the employment information center by [4:30] **3:00** p.m.

(c) Any such extension shall be accomplished in the following manner: for each person to be extended, the employer, through its hiring agent, shall certify on a commission form, the name, registration number, classification and seniority of the registrant to be extended, the specific duty assignment performed and to be performed by the registrant and the location of said duty assignment performed and to be performed.

7.19 Prior day ordering (PDO) of registrants not otherwise prevalidated.

An employer may prior day order (PDO) any registrant for employment who was not otherwise prevalidated in the following manner:

(a) Between 2:30 p.m. and 3:30 p.m. on the prior day, waterfront employers, through hiring agents and through the THEIC, may order casuals for employment the next day;

(b) Between 2:30 p.m. and 3:30 p.m. on Friday afternoon, waterfront employers, through hiring agents and through the THEIC, may order longshore casuals for any shift on Saturday, Sunday or Monday, and may order checker casuals for any shift on Monday;

(c) Between 2:30 p.m. and 3:30 p.m. on the last business day prior to a holiday, waterfront employers, through hiring agents and through the THEIC, may order casuals for any shift on the holiday;

(d) Such selection shall be made from a complete list of available registrants possessing the particular qualification needed;

(e) Such selection shall be made in accordance with the seniority priorities as contained in sections 7.29 through 7.40, inclusive, of the Part; and

(f) A list of registrants so selected shall be posted at the pier or terminal and the appropriate employment information center.

[7.17]**7.20** [Hiring of persons at centers] **Obtaining Employment Information, Availability for Employment; Hiring (Weekdays).**

(a) [Any registrant not previously ordered pursuant to section 7.14 may seek employment by appearing at an employment information center. Prior to selecting any such longshoreman for employment, each hiring agent shall notify the employment information center of the number of longshoremen and checkers he intends to employ. This number may be revised by the hiring agent at any time prior to the time he commences hiring according to seniority in the industry, as stated in sections 7.25 through 7.36 inclusive, of this Part. The hiring agent may employ only such number of longshoremen and checkers he has stated he intends to employ, as revised. In the event additional men are needed after he has commenced hiring according to seniority in the industry, the hiring agent shall notify the employment information center of such additional needs. He may hire such additional longshoremen and checkers he has declared as needed only after all hiring agents present in the employment information center have had an opportunity to select the number of longshoremen and checkers they have declared as needed before they commenced hiring according to seniority in the industry. To fill his employer's requirements, a hiring agent shall make his selection from among such persons present in accordance with sections 7.25 through 7.36, inclusive, during the hiring periods designated by the employment information center. An employee so selected shall be validated therefor by the commission.] **Between 4:00 p.m. and 8:00 p.m. on Mondays through Thursdays (except on holidays), longshoremen and checkers may telephone the THEIC to ascertain if they have been ordered for work that evening or at any time during the next day. Between 4:00 p.m. and 8:00 p.m. on Fridays (except on holidays), longshoremen and checkers may telephone the THEIC to ascertain if they have been ordered for work on Saturday, Sunday or Monday. Any such telephone call shall make the individual caller, who has no orders for the next weekday, available for employment at the 7:00 a.m. or 8:00 a.m. hiring on the next weekday. During such call, individuals who do not have orders for the next weekday shall designate a telephone number where they may be reached between the hours of 8:00 a.m. and 9:00 a.m. during the next weekday morning, if that telephone number is different from the individual's usual telephone number maintained in the THS data base.**

(b) [No person registered by the commission shall seek, attempt to seek, or aid and abet another to seek, employment under any circumstances or at any time during the hiring process when his seniority classification would not ordinarily entitle such person to receive said employment.] **Between 8:00 a.m. and 9:00 a.m. on the next weekday morning, those individuals who made themselves available for work on the prior weekday between 4:00 p.m. and 8:00 p.m., may be hired by hiring agents, in accordance with seniority (sections 7.29 through 7.40) by qualification to fill in for absentees or to fill emergency requirements. Said individuals may be advised of such employment by telecommunications system controllers by telephone provided that said advice is made in registration number sequence by seniority and qualifications and is in accordance with section 7.44.**

(c) Prior to selecting any such longshoreman or checker for employment, each hiring agent shall notify the THEIC of the number of longshoremen and checkers he intends to employ. This number may be revised by the hiring agent at any time prior to the time he commences hiring according to seniority in the industry, as stated in sections 7.29 through 7.40, inclusive, of this Part. The hiring agent may employ only such number of longshoremen and checkers he has stated he intends to employ, as revised. In the event additional persons are needed after the hiring agent has commenced hiring according to seniority in the industry, the hiring agent shall notify the THEIC of such additional needs. He may then hire such additional longshoremen and checkers he has declared as needed only after all other hiring agents have had an opportunity to select the number of longshoremen and checkers they have declared as needed before they commenced hiring according to seniority in the industry and only if permitted under the applicable collective

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bargaining agreement. To fill his employer's requirements, a hiring agent shall make his selection from among such persons who have made themselves available in accordance with this section and in accordance with sections 7.29 through 7.40 inclusive, during the designated hiring period.

[(c)]**(d)** No hiring agent [licensed by the commission] shall knowingly hire, or attempt to hire, any person registered by the commission under any circumstances or at any time during the hiring process when such person's seniority classification would not ordinarily entitle him to receive said employment.

7.21 Other Weekday Availability and Hirings.

(a) From 9:00 a.m. to 12:45 p.m. Monday through Friday (except on holidays) longshoremen and checkers may telephone the THEIC to voluntarily make themselves available for employment at 1:00 p.m. on that day. Said individuals shall leave a telephone number where they can be reached, if that telephone number is different from the individual's usual telephone number maintained in the THS data base;

(b) From 5:30 p.m. to 6:45 p.m. Monday through Friday (except on holidays) longshoremen and checkers may telephone the THEIC to voluntarily make themselves available for employment at 7:00 p.m. and 11:00 p.m. on that day. Said individuals shall leave a telephone number where they can be reached, if that telephone number is different from the individual's usual telephone number maintained in the THS data base.

(c) A hiring agent may fill his employer's requirements from those registrants who made themselves available for 1:00 p.m., 7:00 p.m. or 11:00 p.m. employment, by selecting said registrants in accordance with seniority and by qualifications through the telephonic hiring system. Telecommunications system controllers may advise registrants of such employment in accordance with section 7.20(b).

7.22 Availability for weekend and holiday employment; weekend and holiday hirings; obtaining holiday employment information.

(a) Between 7:00 a.m. and 8:00 a.m. on Saturday, a longshoreman may telephone the THEIC to volunteer for any shift on Saturday and/or Sunday and shall leave a telephone number where he may be reached, if that telephone number is different from the longshoreman's usual telephone number maintained in the THS data base.

(b) Between 4:00 p.m. and 8:00 p.m. on the last business day before a holiday, longshoremen may telephone the THEIC for work orders for any shift on the holiday. A longshoreman who has not received any such orders may, between 7:00 a.m. and 8:00 a.m. on the day of a holiday when casual hiring will be conducted, may telephone the THEIC to volunteer for any shift on the holiday and shall leave a telephone number where he may be reached, if that telephone number is different from the longshoreman's usual telephone number maintained in the THS data base.

(c) A hiring agent may fill his employer's requirements from those longshoremen who made themselves available for weekend or holiday employment, by selecting such longshoremen in accordance with seniority and by qualification through the telephonic hiring system. Telecommunications system controllers may advise registrants of such employment in accordance with section 7.20(b).

(d) With respect to casual checker weekend employment see section 7.15(b). In the event of an emergency, a hiring agent, for weekend work, may order a checker on his employer's list, and shall post-validate the hiring at an employment information center on the next regular working day stating, in writing, on a commission form, the nature of the emergency.

[7.19] **7.23** (No change in text.)

[7.20 Show-up cards.

Immediately following the morning hiring period, the commission may issue a record (to be known as a "show-up card") to any longshoreman who represents to the commission that:

(a) he has been present during such hiring period and made himself available for employment;

(b) he was unable to obtain employment at the employment information center, and he has not been offered nor has he received employment for that day in a registered capacity; and

(c) he has not received another show-up card for the day.]

7.24 Registering and Data Base Validation and Certification.

The employment of any gang, list or individual pursuant to sections 7.13 through 7.22 shall be registered by an employer's hiring agent in the THS data base. Said hiring agent shall also certify to the commission, on an appropriate form, that any such employment is in accordance with this Part. Said form shall be submitted to the commission for validation.

REACTIVATED AND NEW PIERS

[7.21]**7.25** (No change in text.)

[7.22]**7.26** Publication of prior lists for reactivated piers.

Upon receiving such notice with respect to a reactivated pier, **as defined in section 7.2(j)**, the commission shall furnish the employer with such prior regular lists as were duly approved by and on file with the commission at the time the pier's operation terminated and shall post copies of such lists for not less than one week in [the appropriate] **each** employment information center. Any prospective employee whose name appears on any such list who seeks to be included on a regular list at the reactivated pier shall apply [on commission forms through the appropriate employment information center] **to the employer's hiring agent or pier superintendent on an application supplied by the employer and approved by the commission. Within five business days from the end of period of posting, the employer shall forward to the commission copies of all applications received during that period, together with a commission form upon which shall be entered the names and seniority classifications of all persons who apply during that period and a certification by the employer's hiring agent that all persons who sought such listings were furnished applications and that all applications received have been forwarded to the commission.**

[7.23]**7.27** Regular lists for reactivated piers.

[After receiving such job applications from the employment information center and no later than 10 days after giving notice pursuant to section 7.21,] **At the time of filing applications pursuant to Section 7.26**, the employer may select regular employees and members of gangs from job applicants qualified and able to perform the duties of the job, in accordance with sections [7.25] **7.29** through [7.36] **7.40**, inclusive, and file [his] **its** original lists of regular employees and gangs in accordance with section 7.5. The employer may select additional persons to complete [his] **its** original lists for the reactivation of the pier in accordance with section 7.7 no later than 10 days after the initial filing of his lists.

[7.24]**7.28** Regular lists for new piers.

Any prospective employee seeking inclusion in a regular list for a new pier shall apply [on commission forms through the appropriate employment information center] **to the employer's hiring agent or pier superintendent on an application supplied by the employer and approved by the commission. Within five business days from the end of the period of posting, the employer shall forward to the commission copies of all applications received during that period, together with a commission form upon which shall be entered the names and seniority classification of all persons who applied during that period and a certification by the employer's hiring agent that all persons who sought such listings were furnished applications and that all applications received have been forwarded to the commission.** [After receiving such job applications from the employment information center and no] **No** later than 20 days after giving notice pursuant to section [7.21] **7.25**, the employer may select regular employees and gangs from job applicants qualified and able to perform the duties of the job, in accordance with sections [7.25] **7.29** through [7.36] **7.40**, inclusive, and file such lists in accordance with section 7.5.

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PRIORITIES

[7.25]**7.29** Construction of priorities.

In accordance with the provisions of article XV of the Waterfront Commission Act, the following priorities of employment are designed to be consistent with the priorities established in the seniority article of the collective bargaining agreement between the **New York Shipping Association, Inc.** [employers] and the International Longshoremen's Association. The listing of these priorities shall not be construed to limit in any way the right of the parties to the collective bargaining agreement to alter, modify, amend or otherwise change such priorities or agree upon any other method for the selection of registered or licensed employees by way of seniority, experience, regular gangs or otherwise.

[7.26]**7.30** Regular employee lists for reactivated piers.

(a) Each list for regular employees other than coopers, maintenance men[, chenangoes] and marine carpenters, at a reactivated pier shall be established from those persons on prior lists for such category who are available and willing to accept employment, on the basis of seniority at the pier or terminal. [Except for checkers and clerks, if] **If** pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry. Additions to such lists shall be made in accordance with the priorities for additions to the regular list of such category on existing piers.

(b) Coopers, maintenance men,[chenangoes] and marine carpenters shall be employed at a reactivated pier or at a pier at which their employer discontinued operations in accordance with their rights under applicable seniority agreements.

[7.27]**7.31** Regular gang lists for reactivated piers.

(a) Regular gang lists at a reactivated pier shall be established from:

(1) former regular gangs on the basis of gang seniority at the pier, provided the gang is available for work and substantially intact;

(2) former regular-extra gangs on the basis of gang seniority at the pier, provided the gang is available for work and substantially intact; or

(3) members of former regular and regular-extra gangs [and former regular and regular-extra gang followers] in accordance with their seniority at the pier or terminal. Where pier seniority is equal, selection shall be made on the basis of seniority in the industry.

(b) Additions to regular gang lists shall be selected from the following:

(1) regular and regular-extra gangs in the section, provided they are available for and willing to accept employment as intact gangs;

(2) longshoremen identified with the section in which the employer's pier or terminal is located on the basis of seniority in the industry; or

(3) regular and regular-extra gangs from other sections, provided they are available for and willing to accept employment as intact gangs.

[7.28]**7.32** (No change in text.)

[7.29]**7.33** (No change in text.)

[7.30]**7.34 Replacements and additions to regular employee lists.**

Additions and replacements to regular employee lists, except lists for checkers, clerks, coopers, marine carpenters, **and** maintenance men [and chenangoes], shall be selected in the following order from:

[(a) employees listed on the same regular employee list;

(b) regular employee followers of the particular list at such pier or terminal in accordance with their seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;

(c) as to tractor drivers only, employees listed on any other regular employee list of tractor drivers at such pier or terminal in accordance with any existing preferential standing of employees on such list; where such employees have equal status, selection shall be made on the basis of seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;]

[(d)]**(a)** employees listed on any [other] regular employee list at such pier or terminal [in accordance with the preferential standing of employees on such other list]; where such employees have equal status, selection shall be made on the basis of seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;

[(e)]**(b)** employees listed on regular gang lists at such pier or terminal on the basis of seniority at the pier or terminal;

[(f)]**(c)** employees listed on regular-extra gang lists at such pier or terminal on the basis of seniority at the pier or terminal;

[(g) in section 7 of the port, longshoremen listed on special baggage porter and extra labor lists maintained by the commission on the basis of seniority in the industry;]

[(h)]**(d)** longshoremen identified with the section in which the employer's pier or terminal is located on the basis of seniority in the industry;

[(i)]**(e)** longshoremen identified with the borough **or area** in which the employer's pier or terminal is located on the basis of seniority in the industry;

[(j)]**(f)** longshoremen whose seniority classification is identified with any other section in the port on the basis of seniority in the industry; and thereafter,

[(k)]**(g)** the employer may select any other longshoreman without regard to any seniority classification.

Additions and replacements for coopers, marine carpenters, **and** maintenance men[, and chenangoes] shall be selected in accordance with the rights of such employees under applicable seniority agreements.

[7.31]**7.35** Replacements and additions to checker and clerk list.

Replacements and additions to the checker and clerk list, except for timekeepers, [chief clerks and plan clerks] **who may be selected without regard to seniority**, shall be selected in the following order from:

(a) employees listed on the same regular checker and clerk employee list; and, thereafter,

(b) the employer may select any checker or clerk on the basis of seniority classification **in the industry**.

[7.32]**7.36** Replacements in gangs and the formation of new gangs.

Replacements in regular and regular-extra gangs and members of new gangs shall be selected in the following order from qualified [men] **longshoremen**:

(a) employees listed on any regular gang list at the pier or terminal in accordance with their seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;

(b) employees listed on any regular-extra gang list at the pier or terminal in accordance with their seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;

[(c) regular and regular-extra gang followers in accordance with their seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;]

[(d)]**(c)** employees listed on any regular employee list at such pier or terminal [in accordance with the preferential standing of employees on such other list]; where such employees have equal status, selection shall be made in accordance with their seniority at the pier or terminal; where pier or terminal seniority is equal, selection shall be made on the basis of seniority in the industry;

[(e)]**(d)** longshoremen identified with the section in which the employer's pier or terminal is located on the basis of their seniority status in the industry;

[(f)]**(e)** longshoremen identified with the borough **or area** in which the employer's pier or terminal is located on the basis of seniority in the industry;

[(g)]**(f)** longshoremen whose seniority classification is identified with any other section in the port on the basis of their seniority status in the industry; and, thereafter,

[(h)]**(g)** the employer may select any other longshoremen without regard to any seniority classification. Temporary replacements in

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gangs shall be selected in the same order of priority without regard to seniority at the pier or terminal.

[7.33]**7.37** Replacements in voluntary gangs.

Replacements in voluntary gangs shall be selected from:

(a) longshoremen identified with the section or sections within the employment information center where the gang is listed, on the basis of seniority in the industry;

(b) longshoremen identified with the borough **or area** in which the employer's pier or terminal is located on the basis of seniority in the industry;

(c) longshoremen whose seniority classification is identified with any other section in the port on the basis of seniority in the industry; and, thereafter,

(d) any other longshoremen without regard to any seniority classification.

[7:34]**7.38** Ordering employees [at] **through** the [centers] **THEIC**.

Persons [appearing at the centers] **who have made themselves available through the THEIC** shall be ordered for employment in accordance with the provisions of this Part for the additions of employees to lists for that category of employment **and the hiring sequence established, and amended from time to time, by the New York Shipping Association, Inc., and the International Longshoremen's Association, or by a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association.**

[7.35]**7.39** Ordering by special agreement.

Where on any pier or terminal or in any area or section there exists a special agreement concerning the preferential order of hiring of gangs or of employees as individuals, such agreement shall be submitted in writing to the commission by the [seniority] **joint** board established by the New York Shipping Association and the International Longshoremen's Association. If the commission determines that such agreement is not inconsistent with the laws of the United States, the laws of the States of New York and New Jersey and the objectives of the Waterfront Commission Act, such preferential order of hiring may be instituted [in the appropriate employment information center].

[7.36]**7.40** Sections.

For the purpose of priorities for longshoremen other than **checkers,** coopers, maintenance men[, chenangoes] and marine carpenters, the port shall consist of the following sections: Section 1 [Army Base-Brooklyn, NY] **Brooklyn, Sugar Houses in Yonkers and Long Island City**.

[Section 2 57th Street to Pier 7, Bush Terminal-Brooklyn, NY]

[Section 3 17th Street to Pier 11-Brooklyn, NY]

[Section 4 Greenpoint-Brooklyn, NY]

[Section 5 Sugar Houses-Yonkers, Brooklyn and Long Island City, NY]

[Section 6 Pier 10 to Pier 1-Brooklyn, NY]

Section 7 Piers 97 to 64 [N.R.] **North River**-Manhattan, NY

Section 9 Piers 62 to 54 [N.R., Including Sea Land Service Container Terminal-Manhattan, NY] **North River-Manhattan, NY**

Section 10 Piers 51 to 25 [N.R.] **North River**-Manhattan, NY

Section 11 Pier 15 [N.R.] **North River,** around the horn to Pier 68 [E.R.] **East River**-Manhattan, NY

Section 12 Port Newark [to Perth Amboy, NJ], **Port Elizabeth, Perth Amboy to Leonardo, NJ**

[Section 13 Jersey City, NJ]

Section 14 **Jersey City and** Bayonne, NJ

Section 15 Hoboken, Weehawken and Edgewater, NJ

Section 16 [Clifton and Tompkinsville-] Staten Island, NY

[Section 18 39th Street to 21st Street-Brooklyn, NY]

MAINTAINING AND AVAILABILITY OF RECORDS: MONITORING

7.41 Availability of documents, tapes, disks and other data; data base to reflect commission eligibility status.

(a) The records, transaction logs, documents, tapes, disks, and other data compiled, collected or maintained by the New York Shipping Association, Inc., the International Longshoremen's Association or by a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association pertaining to the THS shall be available for inspection, investigation and duplication by the commission, and shall be furnished to the commission, as required. Said information shall include, but not be limited to: absentee reports, audit and presentee reports, availability for hiring and hiring data and transaction logs. Said data shall be maintained for a period of at least three (3) years.

(b) Any data base list of gangs and registrants or individual registrants kept and maintained by the management organization representing employers of longshoremen and checkers in the Port of New York District, or by the labor organization representing longshoremen and checkers in the Port of New York District, or by a joint board of the management and labor organization, must reflect a registrant's waterfront commission eligibility status. Unless otherwise authorized in writing, said status shall only be entered into the data base by commission employees at a data base terminal designated by the commission.

7:42 Recording of Telephone Calls; Monitoring by Commission.

All telephone calls to and from the THEIC in connection with all phases of the telephone hiring system operation shall be recorded and all said recordings made by the New York Shipping Association, Inc., the International Longshoremen's Association or by a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association, shall be retained for a period of six months under the sole custody and control of the commission. The commission may review and abstract said recordings in any manner. The commission may also monitor, in any manner, any and all incoming or outgoing telephone calls concerning the telephone hiring system operation.

PROHIBITED CONDUCT

[7.37]**7.43** Unauthorized hiring and solicitation of employment.

(a) No person shall, directly or indirectly, hire any person for work as a longshoreman **or checker** within the Port of New York District, except through employment information centers established by the commission. No person shall accept any employment as a longshoreman **or checker** within the Port of New York District, except through such employment information centers.

(b) No person shall [solicit or] report for **or solicit** employment at any pier or terminal without having previously been selected and validated for employment [at] **through** an employment information center. No gang foreman or any other person shall instruct or advise any person to [solicit or] report for **or solicit** employment at any pier or terminal prior to that person's selection and validation [at] **through** an employment information center.

[7.38]**7.44** Unauthorized participation in hiring.

[No] **Except as specifically provided in section 7.20(b), no** person shall participate or attempt to participate in any way, directly or indirectly, in the identification, selection or designation of a person for any list or roster established by the commission pursuant to [this Chapter] **these Regulations** or for employment as a longshoreman **or checker**, or of a gang for employment, except a licensed hiring agent, his superior or a person for whom permission is granted by the commission upon application of his employer and for whom appropriate identification has been issued.

[7.39]**7.45** Unauthorized conduct in employment information centers.

(a) No persons except licensed and registered persons shall have access to the employment information centers [between 7:30 and 8:30 a.m., 2:00 and 4:30 p.m., and 6:30 and 7:30 p.m.] without

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approval from the commission. It shall be the policy of the commission to grant to representatives of management and the union permission to observe the hiring.

(b) No person shall in or upon any area, stairway or other appurtenance of an employment information center, sell or offer for sale any article of merchandise; conduct or solicit any business or trade; solicit alms, funds or contributions for any purpose; or post, distribute or display signs, advertisements, circulars, printed or written matter.

(c) No person shall gamble, conduct or engage in any game of chance in or upon any area, stairway or any other appurtenance of an employment information center.

(d) No person shall deface, mark, break or otherwise damage any part of a center or any property therein, or create a disturbance in or about a center or do any act or thing which shall create a nuisance in or about a center.

(e) No person who is unable to give a satisfactory explanation of his presence shall loiter in or about any lavatory area, stairway or other appurtenance or an employment information center.

(f) Except in any area designated by the commission as a smoking area, no person shall smoke or carry a lighted cigarette, cigar or pipe in or upon any area, stairway or any other appurtenance of an employment information center.

(g) Any permission granted by the commission, directly or indirectly, expressly or by implication, to any person or persons to enter upon or use an employment information center or any part thereof is conditioned upon acceptance of and compliance with the provisions of this section.

7.46 Tampering with THS.

(a) No person shall directly or indirectly tamper with or utilize any telephone, computer, monitor, record, transaction log, document, tape, disk, report, data or equipment pertaining to the THS with intent to deceive or defraud the commission, the New York Shipping Association, Inc., the International Longshoremen's Association, a joint board of the New York Shipping Association, Inc. and the International Longshoremen's Association or any other person.

(b) No person shall intentionally tamper with, alter in any manner, or destroy any computer equipment, computer program, computer data or computer material utilized in connection with the THS.

PART 8
REGULARIZATION OF EMPLOYMENT OF LONGSHOREMEN AND CHECKERS (DECASUALIZATION)

Section 8.1 Removal from register for failure to work or [seek work] **be available for work.**

(a) To qualify for retention in the commission's **"deep sea"** register, a person included in such register must work as a longshoreman or as a checker, [or in such other category for which he is registered,] **or make himself available for work in accordance with the provisions of paragraph (b) below,** a minimum of [48] **90** days in each half-calendar year, distributated at least [eight] **15** days to each month during at least five of the six months in each half-calendar year[, except that a person included in such register on or after December 1, 1969 as a longshoreman, chenango or as a checker (not having been transferred from longshoreman status) must work as a longshoreman, chenango or as a checker, respectively, at least 10 days during each of the first two months of his registration]. In administering this section, [application for employment at an employment information center] **receipt of compensation by any such person pursuant to the guaranteed wage provisions of any collective bargaining agreement relating to longshoremen and/or checkers** shall be counted as constituting actual work, **provided that such is received as a result of compliance with the provisions of paragraph (b) below.**

(b) A registrant may make himself available for work by telephoning the THEIC between the hours of 4:00 P.M. and 8:00 P.M. on the prior day for orders. Those registrants who do not receive orders for the next day shall be available between the hours of 8:00 A.M. and 9:00 A.M. on the next day (except Saturday, Sunday or Holidays) for telephone orders.

(c) To qualify for retention in the commission's "A" register, a person included in such register must appear on the current roster of an employer of such persons. Any such employer shall submit to the commission, at least once a year at a time designated by the commission, a roster of persons it employs or intends to employ.

8.2 Audit of availability for work.

(a) The commission may conduct audits, daily or otherwise, to insure that registrants are or have been available for work within the meaning of section 8.1(b). The results of any such audit may be entered in the THS data base.

(b) The association representing employers of longshoremen and checkers and the labor organization representing longshoremen and checkers in the Port of New York District, or a joint board of such association and labor organization, shall furnish the commission with any and all information necessary for the commission to properly perform the audits referred to in paragraph (a) above.

(c) Any audit performed by telecommunications system controllers shall be recorded in writing and furnished to the commission. The results of any such audit shall be entered into the THS data base. The audit sheet shall specify the registration number of the particular registrant contacted, whether the registrant was available or unavailable for work and any appropriate comments, and shall be signed by the person conducting the audit.

[8.2]**8.3** Notice before final removal.

(a) No person shall be removed from the **"deep sea"** register pursuant to article IX and section 5-c of the Act and this Part except upon two weeks' notice of his failure to accrue the minimum number of days required by this Part, [except that no such notice shall be required to be given to any person who shall fail to meet the work requirements of section 8.1 of this Part during the first two months of his registration.]

(b) No person shall be removed from the "A" register except upon two weeks' notice of his failure to appear on any current roster of registrants submitted pursuant to section 8.1(c).

[8.3]**8.4** Requirements for reinstatement after removal from register.

(a) Any person removed from the **"deep sea"** longshoremen's register pursuant to article IX and section 5-c of the Act and this Part may seek registration upon fulfilling the same requirements as for initial inclusion in such register, provided applications for registration are then being accepted by the commission pursuant to section 5-p of the Act and provided further that at least one year has expired from the date of removal, except that immediate reinstatement shall be made upon a proper showing that the registrant's failure to work or apply for work the minimum number of days required by this Part was caused by the fact that the registrant was engaged in the military service of the United States or was incapacitated by ill health, physical injury, or other good cause. In the event such failure to work or apply for work the minimum number of days required by this Part was caused by the fact that the registrant was incarcerated, such registrant may be reinstated provided he applies for such reinstatement within one year after the termination of such incarceration. Any reinstatement under this section shall not preclude a proceeding to revoke, cancel or suspend the registration of any such person reinstated to the register nor the temporary suspension of such registration under the provisions of article XI of the Act.

(b) Any person removed from the "A" register may seek registration upon fulfilling the same requirements as for initial inclusion in such register except that where reinstatement is sought within one year of removal from the said "A" register, the commission may, in its discretion, waive said requirements.

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PART 9
ASSESSMENTS

Section 9.1 Gross payroll payments.

As used in this Part, the term *gross payroll payments* shall include all amounts paid or credited to longshoremen, checkers, pier superintendents, hiring agents or port watchmen, whether as "wages", "hourly rate", [or] "traveling expense" (other than amounts paid to cover actual transportation costs [incurred or otherwise]), **vacation and holiday payments or guaranteed annual income (GAI) payments.**

9.2 (No change.)

9.3 Computing gross payroll payments paid to certain licensees.

For the purpose of computing gross payroll payments, salaries and other compensation of corporate officers and other persons of equivalent managerial authority who hold licenses as pier superintendents or hiring agents and who perform such licensed functions only in emergency or other unusual conditions may, upon submission of adequate evidence, be included only to the extent that such compensation does not exceed [$5,000] **$10,000** per annum.

9.4 and 9.5 (No change.)

9.6 Notice of deficiency; petition for hearing.

(a) Whenever a deficiency in payment of the assessment is determined, the commission shall give notice thereof to the employer. Such determination shall finally and conclusively fix the amount due, unless the employer shall, within 30 days after the giving of notice of such determination, petition in writing to the commission for a hearing, or unless the commission on its own motion shall reduce the same. A petition for such hearing shall be verified and contain the following information:

(1) the name and address of the employer, license number, if any, the period covered by the deficiency and the date of the deficiency notice; and

(2) the grounds upon which the petition is based and each error of fact alleged to have been made by the commission in its determination, together with the facts and arguments in support thereof.

(b) The commission, or its designated hearing officer, shall fix the time and place of the hearing on any petition upon at least five days' notice. The conduct of the hearing shall be governed, in so far as applicable, by the provisions of Part 6 of [this Chapter] **these Regulations.**

PART 10
PUBLIC LOADING

Section 10.1 (No change.)

10.2 and 10.3 (No change.)

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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 June 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 MAY 17, 1993

NEXT UPDATE: SUPPLEMENT JUNE 21, 1993

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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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
24 N.J.R. 2487 and 2650	July 20, 1992	25 N.J.R. 389 and 616	February 1, 1993
24 N.J.R. 2651 and 2752	August 3, 1992	25 N.J.R. 619 and 736	February 16, 1993
24 N.J.R. 2753 and 2970	August 17, 1992	25 N.J.R. 737 and 1030	March 1, 1993
24 N.J.R. 2971 and 3202	September 8, 1992	25 N.J.R. 1031 and 1308	March 15, 1993
24 N.J.R. 3203 and 3454	September 21, 1992	25 N.J.R. 1309 and 1620	April 5, 1993
24 N.J.R. 3455 and 3578	October 5, 1992	25 N.J.R. 1621 and 1796	April 19, 1993
24 N.J.R. 3579 and 3784	October 19, 1992	25 N.J.R. 1797 and 1912	May 3, 1993
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
24 N.J.R. 4307 and 4454	December 7, 1992	25 N.J.R. 2621 and 2794	June 21, 1993
24 N.J.R. 4455 and 4606	December 21, 1992	25 N.J.R. 2795 and 3050	July 6, 1993
25 N.J.R. 1 and 218	January 4, 1993	25 N.J.R. 3051 and 3276	July 19, 1993
25 N.J.R. 219 and 388	January 19, 1993		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:13A-1.1, 14.2, 14.4, 18.1, 18.3	Lemon Law hearings	25 N.J.R. 2625(a)		
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)	R.1993 d.289	25 N.J.R. 2247(a)
	Most recent update to Title 1: TRANSMITTAL 1992-5 (supplement November 16, 1992)			
AGRICULTURE—TITLE 2				
2:1-4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(a)	R.1993 d.274	25 N.J.R. 2247(b)
2:1-4	Disability discrimination grievance procedure: administrative correction	———	———	25 N.J.R. 2859(a)
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:6	Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes	24 N.J.R. 3981(a)		
2:23	Gypsy moth suppression program	25 N.J.R. 1627(a)	R.1993 d.305	25 N.J.R. 2686(a)
2:34-2.1, 2.2	Equine Advisory Board rules	25 N.J.R. 740(a)	R.1993 d.252	25 N.J.R. 2247(c)
2:71	Grades and standards	25 N.J.R. 1801(a)		
2:72	Bonding requirement of commission merchants, dealers, brokers, agents	25 N.J.R. 1802(a)		
2:74	Controlled atmosphere storage apples	25 N.J.R. 1803(a)		
2:76-6.2-6.11, 6.13, 6.16, 6.17	Farmland Preservation Program: acquisition of development easements	25 N.J.R. 1804(a)		
2:76-10	Farmland Appraisal Handbook Standards	25 N.J.R. 1811(a)		
	Most recent update to Title 2: TRANSMITTAL 1993-3 (supplement May 17, 1993)			
BANKING—TITLE 3				
3:1-2.3, 2.5, 2.21	Depository charter applications and branch applications	25 N.J.R. 1033(a)	R.1993 d.258	25 N.J.R. 2248(a)
3:1-12.4	Multiple party deposit accounts: administrative correction	———	———	25 N.J.R. 2860(a)
3:1-16.2, 16.3	Fees; mortgage banker non-servicing	25 N.J.R. 2625(b)		
3:2-1.4	Mortgage banker non-servicing	25 N.J.R. 1035(a)	R.1993 d.295	25 N.J.R. 2687(a)
3:2-1.4	Mortgage banker non-servicing	25 N.J.R. 2625(b)		
3:3-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(b)	R.1993 d.321	25 N.J.R. 2860(a)
3:32	Conversion of associations and savings banks	25 N.J.R. 2799(a)		
3:38-1.3, 4.1	Mortgage banker—mortgage banker non-servicing conversion; fees	25 N.J.R. 2625(b)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:41-2.1, 11	Cemetery Board: location of interment spaces and path access	25 N.J.R. 623(a)		
	Most recent update to Title 3: TRANSMITTAL 1993-4 (supplement May 17, 1993)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1-5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(c)		
4A:3	Classification, services and compensation	25 N.J.R. 1916(a)		
4A:4	Selection and appointment	25 N.J.R. 1085(b)	R.1993 d.270	25 N.J.R. 2509(a)
	Most recent update to Title 4A: TRANSMITTAL 1993-3 (supplement April 19, 1993)			
COMMUNITY AFFAIRS—TITLE 5				
5:3	Department records	25 N.J.R. 2157(a)		
5:5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA))	25 N.J.R. 1315(a)		
5:10	Maintenance of hotels and multiple dwellings	25 N.J.R. 2627(a)		
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-3.3	Uniform Fire Code: administrative correction regarding general precautions in rooming and boarding houses	_____	_____	25 N.J.R. 2519(a)
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:18C-4.2, 5.2, 5.3, 5.4	Fire service training and certification	25 N.J.R. 1846(a)		
5:23-1.4, 2.16, 2.17	Uniform Construction Code: prior approvals; abandoned wells	25 N.J.R. 2158(a)		
5:23-1.6, 2.15, 4.18	Uniform Construction Code: prototype plan review	25 N.J.R. 1629(a)	R.1993 d.353	25 N.J.R. 3147(a)
5:23-2.7, 9.3	Uniform Construction Code: ordinary repairs; interpretation	25 N.J.R. 2159(a)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)	R.1993 d.198	25 N.J.R. 2519(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)		
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)		
5:23-8	Asbestos Hazard Abatement Subcode: administrative corrections	_____	_____	25 N.J.R. 2862(a)
5:25-2.5, 5.4	New home warranties and builders' registration: administrative corrections	_____	_____	25 N.J.R. 2545(a)
5:30	Local Finance Board rules	25 N.J.R. 1630(a)	R.1993 d.297	25 N.J.R. 2688(a)
5:51	Handicapped persons recreational opportunities	25 N.J.R. 2633(a)		
5:70-6.3	Congregate Housing Services Program: service subsidy formula	25 N.J.R. 2634(a)		
5:80-23	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program	25 N.J.R. 1847(a)	R.1993 d.370	25 N.J.R. 3148(a)
5:91-14	Council on Affordable Housing: interim procedures	25 N.J.R. 1118(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 1993-5 (supplement May 17, 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)		
	Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)			
EDUCATION—TITLE 6				
6:3	School districts	25 N.J.R. 1095(a)	R.1993 d.272	25 N.J.R. 2249(a)
6:3-9	School Ethics Commission	25 N.J.R. 1924(a)		
6:11-3.2	Professional licensure and standards: fees	25 N.J.R. 1111(a)	R.1993 d.266	25 N.J.R. 2263(a)
6:21-12	Use of school buses	25 N.J.R. 1095(a)	R.1993 d.272	25 N.J.R. 2249(a)
6:28-1.1, 1.3, 2.3, 2.6, 2.7, 3.2, 3.7, 4.1–4.4, 7.5, 8.4, 9.2, 10.1, 10.2, 11.2, 11.4, 11.9	Special education	25 N.J.R. 1318(a)		
6:29-1.7, 9, 10	Eye protection in schools; reporting of child abuse allegations; safe and drug free schools	25 N.J.R. 1095(a)	R.1993 d.272	25 N.J.R. 2249(a)
6:30	Adult education programs	25 N.J.R. 1112(a)	R.1993 d.267	25 N.J.R. 2264(a)
	Most recent update to Title 6: TRANSMITTAL 1993-4 (supplement May 17, 1993)			

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		
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)		
7:1D	Allocation of water supply costs for emergency water projects	25 N.J.R. 2635(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1F-2.2, App. A	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)		
7:1G-1–5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)		
7:1G-1.2, 6.1–6.11, 6.13-6.16	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)		
7:1G-2.1, 6.4	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)		
7:1I	Processing of damage claims under Sanitary Landfill Facility Contingency Fund Act	25 N.J.R. 741(a)	R.1993 d.303	25 N.J.R. 2715(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)		
7:3	Bureau of Forestry rules	25 N.J.R. 1348(a)	R.1993 d.304	25 N.J.R. 2704(a)
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:5A	Natural Areas System	25 N.J.R. 1350(a)	R.1993 d.350	25 N.J.R. 3150(a)
7:5B	Open lands management	25 N.J.R. 1354(a)	R.1993 d.359	25 N.J.R. 3153(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)		
7:9-4	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)		
7:9-4.5, 4.14, 4.15	Surface water quality standards	25 N.J.R. 405(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)		
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2–12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)	R.1993 d.294	25 N.J.R. 2704(b)
7:11	New Jersey Water Supply Authority: policies and procedures	25 N.J.R. 1036(a)	R.1993 d.239	25 N.J.R. 2267(a)
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: rates for sale of water	24 N.J.R. 4472(a)	R.1993 d.240	25 N.J.R. 2267(b)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: rates for sale of water	24 N.J.R. 4474(a)	R.1993 d.241	25 N.J.R. 2269(a)
7:14-8.4	Request for adjudicatory hearing on penalty assessment for violations of Water Pollution Control Act: administrative correction	———	———	25 N.J.R. 2862(b)
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)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14A-1.8	NJPDES Program fees	25 N.J.R. 1358(a)		
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-4.7	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)	R.1993 d.300	25 N.J.R. 2718(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)		
7:22-3.4, 3.7, 3.8, 3.9, 3.11, 3.17, 3.20, 3.26, 3.27, 3.32, 3.34, 3.37, 4.4, 4.7, 4.8, 4.9, 4.11, 4.13, 4.17, 4.20, 4.26, 4.29, 4.32, 4.34, 4.37, 4.46, 5.4, 5.11, 5.12, 6.17, 6.27, 10.2, 10.3, 10.8, 10.9, 10.11, 10.12	Financial assistance programs for wastewater treatment facilities	24 N.J.R. 4310(b)	R.1993 d.242	25 N.J.R. 2271(a)
7:22-9.1, 9.2, 9.4, 9.11–9.15, 10.1, 10.2, 10.4, 10.5, 10.6	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)		
7:22A-1.4, 1.5, 1.7, 1.12, 1.15, 1.16, 2.4, 2.5, 2.6, 2.8, 3.4, 4.2, 4.5, 4.8, 4.11, 6.1–6.9, 6.11, 6.12, 6.14, 6.15, 7	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)		
7:25-1.5	Fish and Game Council: license, permit and stamp fees	25 N.J.R. 1928(a)	R.1993 d.360	25 N.J.R. 3154(a)
7:25-5	1993-94 Game Code	25 N.J.R. 1930(a)		
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, 18.14	Summer flounder permit conditions	25 N.J.R. 2167(a)		
7:25-18.12	Weakfish management: administrative correction	_____	_____	25 N.J.R. 2281(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)		
7:26-2.11, 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)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)	R.1993 d.302	25 N.J.R. 2719(a)
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-7.7, 8.20	Used motor oil recycling	24 N.J.R. 2383(a)	R.1993 d.342	25 N.J.R. 2863(a)
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-8.13, 8.16, 8.19	Hazardous waste listings: F024 and F025	25 N.J.R. 755(a)	R.1993 d.351	25 N.J.R. 3155(a)
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)	R.1993 d.342	25 N.J.R. 2863(a)
7:26B-1.3, 1.5, 1.6, 1.8, 1.9	Environmental Cleanup Responsibility Act (ECRA) rules: operative date of amendments	_____	_____	25 N.J.R. 3155(b)
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)	R.1993 d.245	25 N.J.R. 2281(b)
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-25.9	Oxygenated fuels program: variance for contemporaneous averaging provision	_____	_____	25 N.J.R. 2720(a)
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(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)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(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)		
7:29-1.1, 1.2, 2	Determination of noise from stationary sources: extension of comment period	25 N.J.R. 1425(a)		
7:29-1.1, 1.5, 2	Determination of noise from stationary sources	25 N.J.R. 1040(a)	R.1993 d.301	25 N.J.R. 2721(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:31	Toxic Catastrophe Prevention Act Program	25 N.J.R. 1425(b)	R.1993 d.358	25 N.J.R. 3156(a)
7:32	Energy conservation in State buildings	25 N.J.R. 1655(a)	R.1993 d.347	25 N.J.R. 2868(a)
7:36	Green Acres Program: opportunity to review draft rule revisions	25 N.J.R. 1473(a)		
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)	R.1993 d.265	25 N.J.R. 2472(a)
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)		

Most recent update to Title 7: TRANSMITTAL 1993-5 (supplement May 17, 1993)

HEALTH—TITLE 8				
8:2	Creation of birth record	24 N.J.R. 4325(a)		
8:2	Creation of birth record: reopening of comment period	25 N.J.R. 660(a)		
8:18	Catastrophic Illness in Children Relief Fund Program	25 N.J.R. 2169(a)		
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:24-8, 9	Temporary and mobile retail food establishments and agricultural markets	25 N.J.R. 1965(b)	R.1993 d.345	25 N.J.R. 2872(a)
8:25	Youth Camp Safety Act standards	25 N.J.R. 756(a)	R.1993 d.264	25 N.J.R. 2546(b)
8:31B-2, 3.70	Hospital reimbursement: bill-patient data submissions; revenue cap monitoring	25 N.J.R. 1660(a)	R.1993 d.362	25 N.J.R. 3205(a)
8:33	Certificate of Need: application and review process	25 N.J.R. 2171(a)		
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)		
8:33S	Surgical facilities: certificate of need	25 N.J.R. 2790(a)		
8:35A-1.2, 3.4, 3.6, 4.1, 5.3	Maternal and child health consortia: fiscal management and staffing	25 N.J.R. 1116(a)	R.1993 d.285	25 N.J.R. 2546(c)
8:39	Long-term care facilities: licensing standards	25 N.J.R. 1474(a)	R.1993 d.341	25 N.J.R. 2878(a)
8:39-13.4, 27.1, 27.8, 29.4, 33.2, 45, 46	Long-term care facilities: use of restraints and psychoactive drugs; pharmacy supplies; Alzheimer's and dementia care services	24 N.J.R. 4228(a)	R.1993 d.230	25 N.J.R. 2548(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	Mobile intensive care programs	24 N.J.R. 3255(b)	R.1993 d.202	25 N.J.R. 2721(b)
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)		
8:42B	Drug treatment facilities: standards for licensure	25 N.J.R. 1476(a)	R.1993 d.340	25 N.J.R. 2879(a)
8:43	Licensure of residential health care facilities	25 N.J.R. 25(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)		
8:43G-5.10	Hospital payments to maternal and child health consortia	25 N.J.R. 1295(a)	R.1993 d.236	25 N.J.R. 2555(a)
8:43G-5.10, 19.1, 19.20	Hospital licensing standards: funding for regionalized services; obstetric services structural organization	25 N.J.R. 1117(a)	R.1993 d.286	25 N.J.R. 2554(a)
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:57-3.2	Physician reporting of occupational and environmental diseases and injuries	25 N.J.R. 2186(a)		
8:59-1, 2, 5, 6, 9, 11, 12	Worker and Community Right to Know Act rules	25 N.J.R. 864(a)		
8:59-3.1, 3.2, 3.3, 3.5-3.9, 3.11, 3.13-3.17	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(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)		
8:70	List of Interchangeable Drug Products: evaluation and acceptance criteria	25 N.J.R. 1814(a)	R.1993 d.333	25 N.J.R. 2879(b)
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))	24 N.J.R. 4009(a)	R.1993 d.339	25 N.J.R. 2883(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1221(a), 1969(c))	25 N.J.R. 55(a)	R.1993 d.337	25 N.J.R. 2882(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c))	25 N.J.R. 875(a)	R.1993 d.336	25 N.J.R. 2881(b)
8:71	Interchangeable drug products	25 N.J.R. 1814(b)	R.1993 d.335	25 N.J.R. 2881(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 list	25 N.J.R. 2802(a)		
8:71	Interchangeable drug products	25 N.J.R. 2802(b)		
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)		

Most recent update to Title 8: TRANSMITTAL 1993-4 (supplement May 17, 1993)

HIGHER EDUCATION—TITLE 9

9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)		
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:7-2.6	Student assistance programs: independent student status	25 N.J.R. 1945(a)		
9:9	NJHEAA student loan programs	25 N.J.R. 2187(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)		
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	25 N.J.R. 1946(a)		

Most recent update to Title 9: TRANSMITTAL 1993-4 (supplement May 17, 1993)

HUMAN SERVICES—TITLE 10

10:1-2	Public comments and petitions regarding Department rules (recodify as 10:1A)	25 N.J.R. 1042(a)	R.1993 d.271	25 N.J.R. 2557(a)
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)		
10:14	Statewide Respite Care Program Manual	25 N.J.R. 876(a)	R.1993 d.256	25 N.J.R. 2557(b)
10:15-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:15A-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:15B-1.2, 2.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:15C-1.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(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)		
10:37-5.46–5.50, 12	Community mental health services: children's partial care programs	25 N.J.R. 669(a)	R.1993 d.355	25 N.J.R. 3209(a)
10:37-6.62–6.72, 6.92–6.98, 9, 10	Community mental health programs: quality assurance standards, site review and certification	25 N.J.R. 2193(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)		
10:38A	Pre-Placement Program for patients at State psychiatric facilities	24 N.J.R. 4326(a)	R.1993 d.356	25 N.J.R. 3213(a)
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:41-2.3, 2.8, 2.9	Division of Developmental Disabilities: access to client records and record confidentiality	25 N.J.R. 432(a)		
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:52-1.1	Hospital services reimbursement methodology	25 N.J.R. 1582(a)	R.1993 d.263	25 N.J.R. 2560(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)		
10:52-5, 6, 7, 8, 9	Hospital services reimbursement methodology	25 N.J.R. 1582(a)	R.1993 d.263	25 N.J.R. 2560(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)		
10:63-3.3, 3.8	Long-term care services: elimination of salary regions	25 N.J.R. 433(a)	R.1993 d.371	25 N.J.R. 3215(a)
10:66-1.2, 1.6, 1.7	Independent clinic services: ambulatory care/family planning/surgical facility	25 N.J.R. 2683(a)		
10:69	Hearing Aid Assistance to the Aged and Disabled Eligibility Manual	25 N.J.R. 228(a)	R.1993 d.281	25 N.J.R. 2589(a)
10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13	HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery	24 N.J.R. 4329(a)	R.1993 d.368	25 N.J.R. 3216(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only: eligibility computation amounts	25 N.J.R. 1818(a)		
10:72-1.1, 4.1, 4.5	New Jersey Care—Special Medicaid Manual: specified low-income Medicare beneficiaries	25 N.J.R. 1042(b)	R.1993 d.369	25 N.J.R. 3217(a)
10:81-8.22	Medicaid eligibility of dependent child of adolescent parent	25 N.J.R. 2815(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)		
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)	R.1993 d.282	25 N.J.R. 2589(b)
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)		
10:82-3.14	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)		
10:85-1.1, 3.1, 3.2, 4.2, 7.2	Eligibility for employable GA recipients	25 N.J.R. 1714(a)		
10:86-10.2, 10.6	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:121A-1.5, 2.7	Manual of Requirements for Adoption Agencies: administrative correction and changes	———	———	25 N.J.R. 2591(a)
10:121A-1.5, 3.4, 5.4, 5.5, 5.6, 5.18, 5.10	Manual of Requirements for Adoption Agencies: administrative corrections	———	———	25 N.J.R. 2883(b)
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	25 N.J.R. 2684(a)		
10:127	Residential child care facilities: manual of requirements	25 N.J.R. 1716(a)		
10:133C-4	Division of Youth and Family Services: case goals	25 N.J.R. 1947(a)		
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)		
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 1993-4 (supplement April 19, 1993)

CORRECTIONS—TITLE 10A

10A:1-2.2	"Division of Operations", "indigent inmate" defined	25 N.J.R. 1043(a)	R.1993 d.246	25 N.J.R. 2591(b)
10A:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(b)		
10A:2-6.2, 6.3, 6.4	Investigation of adult and juvenile inmate property claims: administrative changes	———	———	25 N.J.R. 3218(a)
10A:3-9.6	Recall of inmate to court	25 N.J.R. 2820(a)		
10A:31-5.1, 5.2, 5.3	Adult county correctional facilities: staff training	25 N.J.R. 1817(a)	R.1993 d.324	25 N.J.R. 2884(a)
10A:71-3.2, 3.21	State Parole Board: calculation of parole eligibility terms	25 N.J.R. 1665(a)		
10A:71-3.47	Inmate parole hearings: victim testimony process	24 N.J.R. 4483(a)		
10A:71-6.4, 7.3	State Parole Board: conditions of parole	25 N.J.R. 435(a)		

Most recent update to Title 10A: TRANSMITTAL 1993-1 (supplement May 17, 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	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)	R.1992 d.371	24 N.J.R. 3414(a)
11:1-32.4	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:2-34	Surplus lines: allocation of premium tax and surcharge	25 N.J.R. 1827(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)		
11:3-2.8, 33.2, 34.4, 44	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	25 N.J.R. 1290(a)	R.1993 d.238	25 N.J.R. 2479(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)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-19.3, 34.3	Automobile insurance eligibility rating plans: incorporation of merit rating surcharge	24 N.J.R. 2332(a)	Expired	
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)		
11:3-29.2, 29.4, 29.6	Automobile insurance PIP coverage: medical fee schedules	25 N.J.R. 229(b)		
11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-35.5	Automobile insurance rating: eligibility points of principal driver	24 N.J.R. 2331(a)	Expired	
11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.23	Real Estate Commission: transmittal by licensees of written offers on property	24 N.J.R. 3486(a)	R.1993 d.365	25 N.J.R. 3219(a)
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:6-2	Workers' compensation managed care organizations	25 N.J.R. 1330(a)	R.1993 d.346	25 N.J.R. 2885(a)
11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:13-8	Commercial lines: prospective loss costs filing procedures	25 N.J.R. 1047(a)		
11:15-3	Joint insurance funds for local government units providing group health and term life benefits	25 N.J.R. 436(a)	R.1993 d.354	25 N.J.R. 3220(a)
11:17-1.2, 2.3–2.15, 5.1–5.6	Insurance producer licensing	24 N.J.R. 3216(a)		
11:17A-1.2, 1.7	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	25 N.J.R. 1290(a)	R.1993 d.238	25 N.J.R. 2479(a)
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	Emergency (expires 8-13-93)	R.1993 d.344	25 N.J.R. 2945(a)

Most recent update to Title 11: TRANSMITTAL 1993-5 (supplement May 17, 1993)

LABOR—TITLE 12				
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)		
12:18-1.1, 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)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: telecommunications worker	24 N.J.R. 2689(a)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: extension of comment period	24 N.J.R. 3015(b)		
12:60-3.2, 4.2	Prevailing wages for public works: extension of comment period	24 N.J.R. 3607(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:100-4.2	Public employee safety and health: occupational exposure to bloodborne pathogens	24 N.J.R. 3607(b)	R.1993 d.323	25 N.J.R. 2894(a)
12:100-4.2	Public employee safety and health: exposure to hazardous chemicals in laboratories	25 N.J.R. 453(b)	R.1993 d.308	25 N.J.R. 2688(b)
12:195	Carnival-amusement rides safety	25 N.J.R. 1832(a)	R.1993 d.343	25 N.J.R. 2896(a)
12:195-2.1, 3.22, 6.1, 7	Carnival and amusement rides: bungee jumping	Emergency (expires 7-2-93)	R.1993 d.244	25 N.J.R. 2128(a)

Most recent update to Title 12: TRANSMITTAL 1993-4 (supplement May 17, 1993)

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:9	Development of small businesses and women and minority businesses: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 1335(c)		
12A:9	Development of small businesses and women and minority businesses	25 N.J.R. 1752(a)	R.1993 d.309	25 N.J.R. 2689(a)
12A:11	Certification of women-owned and minority-owned businesses	25 N.J.R. 1056(a)	R.1993 d.237	25 N.J.R. 2484(a)
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:31-1.4	New Jersey Development Authority: interest rate on direct loans	25 N.J.R. 891(a)	R.1993 d.243	25 N.J.R. 2484(b)
12A:120	Urban Enterprise Zone Program and business certification	25 N.J.R. 2645(b)		

Most recent update to Title 12A: TRANSMITTAL 1993-2 (supplement March 15, 1993)

LAW AND PUBLIC SAFETY—TITLE 13

13:1	Police Training Commission rules	25 N.J.R. 1336(a)	R.1993 d.325	25 N.J.R. 2897(a)
13:1C	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1338(a)		
13:2-14.2, 14.7, 20.6, 21.4	Alcoholic beverage control: permits, insignia, and fees	25 N.J.R. 1340(a)	R.1993 d.288	25 N.J.R. 2485(a)
13:3	Amusement games control: effective date of readopted rules	_____	_____	25 N.J.R. 2689(b)
13:19-1.1, 1.7	Driver Control Service: administrative hearings applicability	25 N.J.R. 893(a)		
13:19-10.1	Operating motorcycle or motorized bicycle without protective helmet	25 N.J.R. 2646(a)		
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)		
13:20-38	Dimensional standards for automobile transporters	25 N.J.R. 1342(a)		
13:26	Transportation of bulk commodities	25 N.J.R. 1343(a)		
13:28	Board of Cosmetology and Hairstyling rules	25 N.J.R. 893(b)	R.1993 d.287	25 N.J.R. 2485(b)
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)		
13:30-8.5	Board of Dentistry: complaint review procedures	24 N.J.R. 2800(a)		
13:30-8.6	Board of Dentistry: professional advertising	24 N.J.R. 2801(a)	R.1993 d.332	25 N.J.R. 2898(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)		
13:30-8.18	Continuing dental education	25 N.J.R. 1344(a)		
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.JR. 4010(a)		
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		
13:35-6.13, 9	Acupuncture Examining Board: practice of acupuncture	24 N.J.R. 4013(a)	R.1993 d.299	25 N.J.R. 2689(c)
13:35-6.13, 10.9	Board of Medical Examiners: fee schedule; athletic trainer registration fee	25 N.J.R. 1058(a)	R.1993 d.260	25 N.J.R. 2487(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, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:37-13.1, 13.2	Nurse anesthetist: conditions for practice	24 N.J.R. 4020(a)	R.1993 d.306	25 N.J.R. 2695(a)
13:38-1.2, 1.3, 2.5	Practice of optometry: permissible advertising	24 N.J.R. 4237(a)	R.1993 d.357	25 N.J.R. 3232(a)
13:39-1.3	Board of Pharmacy: fee schedule	25 N.J.R. 1666(a)		
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		
13:39-7.14	Board of Pharmacy: patient profile record system and patient counseling by pharmacist	25 N.J.R. 266(a)	R.1993 d.307	25 N.J.R. 2697(a)
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)		
13:44C	Audio and Speech-Language Pathology Advisory Committee rules	25 N.J.R. 1668(a)		
13:45A-24	Toy and bicycle safety	24 N.J.R. 3019(b)	R.1993 d.372	25 N.J.R. 3235(a)
13:45A-24	Toy and bicycle safety: extension of comment period	24 N.J.R. 3666(a)		
13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)		
13:70-3.40	Thoroughbred racing: minimum age for admittance to racetrack	25 N.J.R. 2647(a)		
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	25 N.J.R. 1060(a)	R.1993 d.262	25 N.J.R. 2488(a)
13:70-29.50	Thoroughbred racing: daily triple payoff in dead heat for win	25 N.J.R. 1671(a)	R.1993 d.366	25 N.J.R. 3238(a)
13:71-2.3	Harness racing: suspension from driving	25 N.J.R. 2647(b)		
13:71-5.18	Harness racing: minimum age for admittance to racetrack	25 N.J.R. 2648(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	25 N.J.R. 1061(a)	R.1993 d.261	25 N.J.R. 2488(b)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for funeral expenses	25 N.J.R. 674(a)	R.1993 d.250	25 N.J.R. 2488(c)
13:75-1.12	Violent Crimes Compensation Board: attorney's fees requiring affidavit of service	25 N.J.R. 674(b)	R.1993 d.251	25 N.J.R. 2489(a)

Most recent update to Title 13: TRANSMITTAL 1993-5 (supplement May 17, 1993)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)		
14:3-5.1	Relocation or closing of utility office	24 N.J.R. 2132(a)	R.1993 d.298	25 N.J.R. 2699(a)
14:3-6.5	Public records	24 N.J.R. 1966(a)	R.1993 d.273	25 N.J.R. 2489(b)
14:3-7.15	Discontinuance of services to customers: notification of municipalities and others	24 N.J.R. 3023(a)		
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)		
14:6-5	Natural gas service: inspection and operation of master meter systems	24 N.J.R. 4494(a)	R.1993 d.247	25 N.J.R. 2490(a)
14:10-5	Competitive telecommunications services	24 N.J.R. 1868(a)	R.1993 d.248	25 N.J.R. 2492(a)
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)		
14:11-8	Natural gas pipelines	25 N.J.R. 897(a)		
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)		
14:18-9.2, 10.1–10.4	Cable television: testing of service and technical standards for system operation	24 N.J.R. 4497(a)	R.1993 d.234	25 N.J.R. 2700(a)
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		

Most recent update to Title 14: TRANSMITTAL 1993-2 (supplement May 17, 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)

Most recent update to Title 15: TRANSMITTAL 1993-2 (supplement May 17, 1993)

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)		
16:25A	Soil erosion and sediment control standards	25 N.J.R. 1479(a)	R.1993 d.276	25 N.J.R. 2496(a)
16:28	Speed limits for State highways	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28-1.33	Speed limit zones along Route 41 in Gloucester, Camden, and Burlington counties	25 N.J.R. 2833(a)		
16:28-1.41	Speed limit zones along U.S. 9 in Berkeley Township and Pine Beach Borough	25 N.J.R. 1834(a)	R.1993 d.327	25 N.J.R. 2913(c)
16:28-1.48, 1.93	Speed rates along Route 167 in Port Republic and Route 44 in Greenwich and West Deptford	25 N.J.R. 2225(a)		
16:28-1.92	Speed limit zones along Route 169 in Bayonne and Jersey City	25 N.J.R. 2834(a)		
16:28A-1.1, 1.7, 1.17, 1.23, 1.32, 1.36	Restricted parking and stopping along U.S. 1 Business in Mercer County, U.S. 9 in Ocean and Monmouth counties, Routes 26 and 33 in Middlesex County, U.S. 46 in Warren and Morris counties, and Route 57 in Warren County	25 N.J.R. 2226(a)		
16:28A	Restricted parking and stopping	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(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)		
16:28A-1.19, 1.98	Parking restrictions along Route 28 in Somerville and Route 56 in Pittsgrove Township	25 N.J.R. 1836(a)	R.1993 d.328	25 N.J.R. 2914(a)
16:28A-1.36	Restricted parking along Route 57 in Washington Borough	25 N.J.R. 2834(b)		
16:28A-1.36, 1.41	Parking restrictions along Route 57 in Warren County and Route 77 in Bridgeton	25 N.J.R. 1835(a)	R.1993 d.329	25 N.J.R. 2915(a)
16:29	No passing	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:30	Miscellaneous traffic rules	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:30-3.8	Shoulder use lane along I-195 in Millstone Township	25 N.J.R. 2651(a)		
16:30-6.3	Weight limit restriction for trucks using Route 173 in Bloomsbury, Hunterdon County	25 N.J.R. 1838(a)	R.1993 d.330	25 N.J.R. 2916(a)
16:30-10.1	Midblock crosswalk on Route 28 in Somerville	25 N.J.R. 1838(b)	R.1993 d.331	25 N.J.R. 2916(b)
16:31	Turns	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:31-1.10, 1.17, 1.22, 1.32	Turn restrictions along U.S. 30 in Waterford Township, Route 73 in Winslow Township, U.S. 130 in Mercer County, and Route 36 in Sea Bright	25 N.J.R. 2835(a)		
16:31A	Prohibited right turns on red	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:41D	Motorist service signs on non-urban interstate and limited access highways	25 N.J.R. 2836(a)		
16:44	Construction services	25 N.J.R. 1954(a)		
16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
16:47-4.4	State Highway Access Management Code: administrative correction	———	———	25 N.J.R. 3238(b)
16:49-1.3, 1.5, 2.1, App.	Transportation of hazardous materials	25 N.J.R. 1065(a)	R.1993 d.235	25 N.J.R. 2497(a)
16:53C	Rail freight program	25 N.J.R. 1481(a)	R.1993 d.277	25 N.J.R. 2503(a)
16:54	Licensing of aeronautical and aerospace facilities	24 N.J.R. 2542(a)	R.1993 d.348	25 N.J.R. 2916(c)
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 3026(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 4025(a)		
16:55	Licensing of aeronautical activities	25 N.J.R. 1483(a)	R.1993 d.278	25 N.J.R. 2505(a)
16:60	Office of Aviation: issuance of summons and designation of law enforcement officer	25 N.J.R. 1484(a)	R.1993 d.279	25 N.J.R. 2505(b)
16:61	Aircraft accidents	25 N.J..R 1485(a)	R.1993 d.280	25 N.J.R. 2505(c)

Most recent update to Title 16: TRANSMITTAL 1993-5 (supplement May 17, 1993)

TREASURY-GENERAL—TITLE 17

17:1	Division of Pensions and Benefits: administration of public employee retirement systems and benefit programs	25 N.J.R. 1955(a)		
17:1-10, 11	State Prescription Drug Program; Dental Expenses Program (recodify to 17:9-8, 9)	25 N.J.R. 675(b)		
17:2-4.3	Public Employees' Retirement System: school year members	25 N.J.R. 908(a)	R.1993 d.296	25 N.J.R. 2701(a)
17:9	State Health Benefits Program	25 N.J.R. 2651(b)		
17:9-1.5	State Health Benefits Program: local employer reentry	25 N.J.R. 460(a)	R.1993 d.269	25 N.J.R. 2505(d)
17:9-2.3	State Health Benefits Program: annual enrollment periods	24 N.J.R. 4025(b)	R.1993 d.259	25 N.J.R. 2506(a)
17:9-2.4	State Health Benefits Program: retirement or COBRA enrollment	24 N.J.R. 4025(c)	R.1993 d.249	25 N.J.R. 2506(b)
17:9-2.4	State Health Benefits Program: reinstatement of prior coverage after return from approved leave of absence	25 N.J.R. 1671(b)	R.1993 d.349	25 N.J.R. 2899(a)
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer" eligibility	24 N.J.R. 3493(a)		
17:10	Judicial Retirement System	25 N.J.R. 1956(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:16-61.5	State Investment Council: Cash Management Fund investments	25 N.J.R. 2839(a)		
17:20	Lottery Commission rules	25 N.J.R. 1347(b)	R.1993 d.310	25 N.J.R. 2701(b)
17:32-7	State Development and Redevelopment Plan: voluntary submission of municipal and county plans for consistency review	25 N.J.R. 1839(a)	R.1993 d.367	25 N.J.R. 3238(c)

Most recent update to Title 17: TRANSMITTAL 1993-5 (supplement May 17, 1993)

TREASURY-TAXATION—TITLE 18

18:2-3	Payment of taxes by electronic funds transfer	25 N.J.R. 1078(a)		
18:7-1.16	Corporation Business Tax: financial businesses	25 N.J.R. 1841(a)	R.1993 d.364	25 N.J.R. 3239(a)
18:7-13.8	Corporation Business Tax: claims for refund	25 N.J.R. 1842(a)		
18:9	Business Personal Property Tax	25 N.J.R. 1485(a)	R.1993 d.312	25 N.J.R. 2899(b)
18:12	Local property tax rules: preparation of tax lists; revaluation; appeals; homestead rebate; exemptions	25 N.J.R. 2652(a)		
18:12-10.1, 10.2, 10.3	Local property tax: classification of real and personal property	25 N.J.R. 61(a)		
18:12A-18:17	Local property taxation: county boards; senior citizens' deduction; farmland assessment; realty transfer fee; assessor qualification	25 N.J.R. 2653(a)		
18:24	Sales and Use Tax	25 N.J..R 1486(a)	R.1993 d.313	25 N.J.R. 2899(c)
18:26	Transfer Inheritance Tax and Estate Tax	25 N.J.R. 1498(a)	R.1993 d.314	25 N.J.R. 2906(a)
18:35	Gross Income Tax; setoff of individual liability	25 N.J.R. 1500(a)	R.1993 d.315	25 N.J.R. 2906(b)
18:35-1.14, 1.25	Gross Income Tax: partnerships; net profits from business	25 N.J.R. 677(a)		
18:35-1.17	Gross income tax: Health Care Subsidy Fund withholding	25 N.J.R. 1957(a)		
18:35-1.27	Gross Income Tax: interest on overpayments	24 N.J.R. 2419(a)	Expired	

Most recent update to Title 18: TRANSMITTAL 1993-3 (supplement April 19, 1993)

TITLE 19—OTHER AGENCIES

19:8	Use and administration of Garden State Parkway	25 N.J..R 1500(b)	R.1993 d.290	25 N.J.R. 2701(c)
19:9	Turnpike Authority rules	25 N.J.R. 2839(b)		
19:9-1.9	Turnpike Authority: double bottom trailer permits	25 N.J.R. 684(a)	R.1993 d.311	25 N.J.R. 2906(c)
19:9-2.7	Turnpike Authority construction contracts: withdrawal of bid for unilateral mistake	25 N.J.R. 62(b)	R.1993 d.326	25 N.J.R. 2906(d)
19:17	PERC Appeal Board rules	25 N.J.R. 1842(b)	R.1993 d.322	25 N.J.R. 2907(a)
19:25-15.17, 15.48	Public financing of general election candidates for Governor	25 N.J.R. 1957(b)	R.1993 d.363	25 N.J.R. 3240(a)

Most recent update to Title 19: TRANSMITTAL 1993-5 (supplement May 17, 1993)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40-2.1	Organization and operation of Commission	Exempt	R.1993 d.352	25 N.J.R. 3240(b)
19:40-2.5	Delegation of Commission authority	24 N.J.R. 2348(a)	R.1993 d.409	25 N.J.R. 3737(b)
19:40-2.6	Post-employment restrictions on former Commission and Division of Gaming Enforcement employees	25 N.J.R. 1501(a)	R.1993 d.291	25 N.J.R. 2702(a)
19:40-5.2	Practice of law before Commission	25 N.J.R. 1672(a)	R.1993 d.316	25 N.J.R. 2907(b)
19:40-6	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1503(a)		
19:41-5, 7.14	Applicant disclosure forms	25 N.J.R. 2655(a)		
19:41-9.1, 9.4	Fee policy	25 N.J.R. 1080(a)	R.1993 d.253	25 N.J.R. 2506(c)
19:42-5.3	Professional practice: multiple party representation	25 N.J.R. 1082(b)		
19:43-4.1	Casino bankroll	25 N.J.R. 1672(b)	R.1993 d.317	25 N.J.R. 2907(c)
19:44	Gaming schools	25 N.J.R. 2660(a)		
19:44-3.2	Statement of gaming school proposal	25 N.J.R. 2655(a)		
19:44-8.3	Dealer instruction: administrative correction	_____	_____	25 N.J.R. 2507(a)
19:44-8.3	Poker	25 N.J.R. 2236(a)		
19:45-1.1, 1.2, 1.11, 1.12, 1.14, 1.15, 1.16, 1.20, 1.24, 1.24A, 1.24B, 1.25, 1.25A–1.25I, 1.26, 1.27, 1.27A, 1.28, 1.29, 1.33, 1.34	Authorized financial statements: acceptance and processing	24 N.J.R. 3232(a)		
19:45-1.1, 1.2, 1.11, 1.12, 1.20	Poker	25 N.J.R. 2236(a)		
19:45-1.1, 1.10, 1.32, 1.36, 1.37, 1.38, 1.42, 1.43, 1.44	Use and operation of drop buckets in slot machines	25 N.J.R. 1503(b)	R.1993 d.318	25 N.J.R. 2908(a)
19:45-1.1, 1.40	Jackpot payouts not paid directly from slot machine	25 N.J.R. 2227(b)		
19:45-1.12	Pai gow poker personnel: administrative correction	_____	_____	25 N.J.R. 2507(a)
19:45-1.12, 1.14, 1.15, 1.46	Currency and coupon exchange on casino floor	25 N.J.R. 1673(a)	R.1993 d.319	25 N.J.R. 2911(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:45-1.12A	Minimum and maximum gaming wagers	25 N.J.R. 1958(a)		
19:45-1.19	Acceptance of tips by dealers and pari-mutuel cashiers	25 N.J.R. 1674(a)	R.1993 d.320	25 N.J.R. 2913(a)
19:45-1.19	Card-o-lette	25 N.J.R. 2230(a)		
19:45-1.32, 1.43	Court room requirements and procedure	25 N.J.R. 2855(a)		
19:45-1.40	Jackpot payout slips	25 N.J.R. 917(a)	R.1993 d.292	25 N.J.R. 2702(b)
19:45-1.43	Counting and recording contents of slot drop buckets: administrative correction	———	———	25 N.J.R. 2913(b)
19:46-1.1, 1.8, 1.9, 1.13F, 1.20	Card-o-lette	25 N.J.R. 2230(a)		
19:46-1.5	Gaming chips not in active use	25 N.J.R. 2233(a)		
19:46-1.6	Storage of gaming chips and plaques	25 N.J.R. 1083(a)	R.1993 d.254	25 N.J.R. 2508(a)
19:46-1.10	Multiple action blackjack	25 N.J.R. 2234(a)		
19:46-1.13E, 1.17, 1.18	Poker	25 N.J.R. 2236(a)		
19:46-1.20	Gaming equipment: administrative correction	———	———	25 N.J.R. 2507(a)
19:46-1.25, 1.26, 1.33	Use and operation of drop buckets in slot machines	25 N.J.R. 1503(b)	R.1993 d.318	25 N.J.R. 2908(a)
19:46-1.33	Slot machine tokens	25 N.J.R. 1961(a)		
19:47	Poker: temporary adoption of new rules	25 N.J.R. 2001(a)		
19:47	Card-o-lette: temporary adoption of new rules	25 N.J.R. 2001(b)		
19:47-1.3, 2.3, 2.6, 3.2, 4.2, 5.1, 5.6, 6.6, 7.2, 8.2, 8.3, 9.3, 10.10, 11.12, 12.10	Minimum and maximum gaming wagers	25 N.J.R. 1958(a)		
19:47-2.3	Implementation of mid-shoe options in blackjack	25 N.J.R. 1508(a)	R.1993 d.293	25 N.J.R. 2703(a)
19:47-2.8, 2.11, 2.15, 2.18	Multiple action blackjack	25 N.J.R. 2234(a)		
19:47-2.17	Over/Under 13 wagers in blackjack	25 N.J.R. 1084(a)	R.1993 d.255	25 N.J.R. 2508(b)
19:47-8.2, 15	Card-o-lette	25 N.J.R. 2230(a)		
19:47-12.6	Pokette payout odds	25 N.J.R. 1962(a)		
19:47-14	Poker	25 N.J.R. 2236(a)		
19:48	Exclusion of persons from casino establishments	25 N.J.R. 2661(a)		
19:51-1.2, 1.8	Casino service industry licensure: regular and continuing business criteria	25 N.J.R. 2662(a)		
19:53	Equal employment and business opportunity	25 N.J.R. 1675(a)		

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