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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 26 NUMBER 18

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(Includes adopted rules filed through August 26, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 18, 1994
See the Register Index for Subsequent Rulemaking Activity.

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **October 19, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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December 19 issue:	
Proposals	**November 16**
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NEW JERSEY REGISTER

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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 22(1994)
Department of Education Review of Regulations

Issued: August 25, 1994.
Effective: August 25, 1994.
Expiration: Indefinite.

WHEREAS, excessive and unnecessary State mandates force school districts to incur considerable costs which are not necessary to ensure educational opportunity, to safeguard the health and safety of pupils or to guarantee accountability; and

WHEREAS, overly prescriptive rules and regulations may also inhibit the initiative of teachers and administrators and dilute accountability for local decision making; and

WHEREAS, the State Board of Education has demonstrated its leadership role in this area by initiating a comprehensive study of unnecessary and overly prescriptive regulations pertaining to education; and

WHEREAS, these efforts of the State Board of Education should be encouraged and facilitated;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Department of Education (the Department) shall complete a comprehensive and thorough review of all current administrative regulations by December 31, 1995. All regulations which are not necessary or which promote inefficiency or are overly prescriptive shall be identified and referred to the State Board of Education for review, and, if warranted, further action.

2. In order to facilitate the Department's review of its regulatory code, the sunset provisions now in effect in each of the regulations of the Department are hereby extended, respectively, by eighteen (18) months from the date of this Order. During the period of review, all such regulations shall remain in full force and effect and may be modified or repealed at any time by the State Board of Education pursuant to the "Administrative Procedure Act."

3. The Department shall invite the input of the public and shall hold at least two public hearings in order to receive testimony concerning regulations of the Department.

4. This Order shall take effect immediately.

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Biological Products for Diagnostic or Therapeutic Purposes

Reproposed New Rules: N.J.A.C. 2:6

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 4:5-107 et seq.
Proposal Number: PRN 1994-514.

Submit written comments by October 19, 1994 to:
Ernest W. Zirkle, DVM, Director
Division of Animal Health
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone (609) 292-3965

The agency proposal follows:

Summary

N.J.A.C. 2:6, Biological Products for Diagnostic or Therapeutic Purposes, expired September 3, 1990, pursuant to the requirements and criteria of Executive Order No. 66(1978). The Department proposes to adopt these new rules in an effort to regulate the sale and use of veterinary biologics in New Jersey.

The Department proposed similar biologics rules on November 15, 1993 (see 25 N.J.R. 4985(a)). During the comment period 290 letters of endorsement were received. Most of these were from veterinarians. The equine and swine industries also supported the proposed rules.

There were three letters of opposition from sheep owners, five letters from beef cattle owners and none from the dairy industry. The sheep and beef cattle owners' complaints centered around the economics of requiring purchase from a veterinarian or a prescription from a veterinarian for the purchase of the biologic.

A survey of large animal practitioners was conducted and, although the economic impact appeared insignificant, the State Board of Agriculture rejected the proposed adoption. This reproposal is similar, but with the prescription clause deleted.

These rules do not apply to drugs or chemicals, including antibiotic preparations.

Biologics are complex products with variable applications and effects that have the potential for misuse. The probable results of their misuse can maintain or spread disease, complicate the diagnostic process and fail to provide effective disease protection.

These proposed new rules exempt individual registration of most Federally licensed manufacturers or products, and limit the use and distribution of unlicensed or conditionally licensed products. The promulgation of these rules will help insure that those biologics which have been licensed by the U.S.D.A. or by the Director of the Division of Animal Health in the New Jersey Department of Agriculture will be used or sold. The rules contain the definitions used (N.J.A.C. 2:6-1.1), distribution restrictions (N.J.A.C. 2:6-1.2), procedures for State license or permit (N.J.A.C. 2:6-1.3), restrictions on the use of biologics (N.J.A.C. 2:6-1.4), and revocation of State license or permit (N.J.A.C. 2:6-1.5).

Social Impact

The proposed new rules affect veterinarians, livestock owners and poultrymen by protecting these individuals from the ineffective use of vaccines, serums, antigens and diagnostic agents to determine, prevent and treat animal disease. The risks of not promulgating these rules include the use of unlicensed or conditionally licensed biologics, which could result in the maintenance and spread of infection in livestock, misdiagnosis and mistreatment of disease entities. In addition, the rules will protect human health by restricting exposure to disease-causing organisms.

Economic Impact

Diagnosis, prevention and treatment of animal diseases, to include the use of proper veterinary biologics, prevents the illness and death of horses, livestock and poultry, and, as a consequence, increases the economic return of animal agriculture products to farmers. Healthy animals also allow New Jersey farmers the opportunity to compete more effectively in the national and international marketplace for the distribution and sale of animal agriculture products.

Regulatory Flexibility Analysis

The restriction of the distribution or use of unlicensed or conditionally licensed biologics will have a minimum impact upon the farmers in this State. Most, if not all farmers, are considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are no reporting or recordkeeping requirements created by these rules. The rules permit non-professional individuals to acquire and use biologic products, in accordance with this chapter. Because the rules are concerned with the control of disease and the public welfare, no lessening of, or exemption from these requirements is provided.

Full text of the proposed new rules follows:

CHAPTER 6
BIOLOGICAL PRODUCTS FOR DIAGNOSTIC OR THERAPEUTIC PURPOSES

SUBCHAPTER 1. BIOLOGICAL LICENSING

2:6-1.1 Definitions

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

"Accredited veterinarian" means any licensed Doctor of Veterinary Medicine who has fulfilled the requirements for Federal and State accreditation, pursuant to 9 C.F.R. §§160.1 et seq. in the State of New Jersey.

"Biological product" or "biologic," "biological" and "biological drug" mean any product utilizing virus (whether active or inactive) or any molecular part thereof, bacteria or any genetic equivalent thereof, or toxin as its basic component, or any product derived from the serum of any other animal, in the diagnosis (diagnostic biologic) or prevention (prophylactic biologic) of animal disease. This includes any and all products covered by the Animal Virus, Serum, and Toxin Act, 21 U.S.C. §§151 et seq., and the regulations issues pursuant thereto, 9 C.F.R. §§101.1 et seq.

"Diagnostic biologic" means a preparation of bacterial, viral or parasitic agents, products, factions, serums, or fractions of serums utilized to determine experience with a disease causing agent.

"Director" means the Director, Division of Animal Health, New Jersey Department of Agriculture.

"Distribution" means the preparation, sale, barter, exchange, or giving away of any regulated product.

"Domestic animal" means any and all animals other than humans.

"Licensed veterinarian" means a Doctor of Veterinary Medicine licensed by the New Jersey Board of Veterinary Medical Examiners, pursuant to N.J.S.A. 45:16-1 et seq., and the rules issued pursuant thereto, N.J.A.C. 13:44, to practice veterinary medicine, surgery, and dentistry in the State of New Jersey.

"Person" means any individual, corporation, institution or partnership.

"Prophylactic biologic" means any and all vaccines or toxoids used to initiate immunity against disease in domestic animals.

2:6-1.2 Distribution of biologics

(a) Unless otherwise stated, all United States Department of Agriculture (U.S.D.A.) licensed biologics may be distributed and used according to the terms of this chapter.

(b) No U.S.D.A. unlicensed or conditionally licensed biologic or diagnostic biologic shall be distributed without the written permission from the Director.

2:6-1.3 Procedure for State license or permit

(a) License or written permission to distribute, use, sell, or give away a biological product unlicensed by or conditionally licensed by

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the USDA shall be granted by the Director upon a showing to the Director's satisfaction in writing of:

1. The purpose, purity, safety, potency and efficacy of the product;
2. The procedures to insure (a)1 above;
3. Reporting procedures to track the product; and
4. The credibility and reliability of the person applying for the license, based on their credentials and past performance in handling these materials.

(b) License or written permission to distribute, use, sell, or give away a biological product shall be granted by the Director for more than one biological product upon a showing, to the satisfaction of the Director in writing, of the need for scientific research or testing.

2:6-1.4 Use of biological products, diagnostic biologics and prophylatic biologics

(a) Only U.S.D.A. licensed biological products or those biological products authorized in accordance with N.J.A.C. 2:6-1.2 or 1.3 shall be used in New Jersey.

(b) The use of biologic products is subject to the following restrictions:

1. Brucella Abortus and contagious ecthyma vaccines shall be administered only by accredited veterinarians; and
2. Diagnostic biologics for the following diseases are limited to use by the New Jersey Department of Agriculture, Division of Animal Health only, unless specific written permission is granted by the Director, for in vitro diagnosis of:

i. Anaplasmosis
ii. Avian Influenza
iii. Brucellosis
iv. Equine Infectious Anemia
v. Equine Viral Arteritis
vi. Paratuberculosis (Johne's Disease).
vii. Pseudorabies
viii. Pullorum

(c) Exceptions to (b)2 above may be granted by the Director to other government agencies who may be cooperating with the New Jersey Department of Agriculture, or where in the opinion of the Director, there is an emergent situation requiring immediate action.

2:6-1.5 Revocation of license or permission to distribute or use

(a) A license or permission to distribute or use any biological product may be revoked by the Director when there has been a violation of State or Federal laws, rules or regulations, or where the public health, welfare or safety shall warrant such revocation, subject to notice and opportunity to be heard.

(b) Any hearing to be conducted under this section shall be so conducted pursuant to N.J.A.C. 2:1-3.4 and 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.

BANKING

(a)

NEW JERSEY CEMETERY BOARD

Applications

Proposed Recodification with Amendments: N.J.A.C. 3:40-6.1 through 6.9, and 6.11 through 6.12

Proposed New Rules: N.J.A.C. 3:41-13.8 through 13.10

Proposed Repeal: N.J.A.C. 3:40-6.10

Authorized By: New Jersey Cemetery Board, William B. Waits, Executive Director.

Authority: N.J.S.A. 8A:2-2.

Proposal Number: PRN 1994-520.

Submit comments by October 19, 1994 to:
Rule Comments
William B. Waits, Executive Director
New Jersey Cemetery Board
Department of Banking, CN-040
20 W. State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments and new rules revise and supplement existing rules regarding applications to the Board. They specify what must be submitted in an application for a Certificate of Authority, dissolution of a cemetery company, merger or consolidation of cemetery companies, sale of cemetery lands, removal of unsightly monumentation, enlargement of cemetery area through purchase of land, leasing or licensing unused cemetery lands, and a bulk sale of interment spaces. They also set forth standards for approving or disapproving applications. The proposal also recodifies N.J.A.C. 3:40-6.1 through 6.9 and 6.11 through 6.12 to a new subchapter N.J.A.C. 3:41-13, titled "Applications".

The proposed amendments clarify language in N.J.A.C. 3:40-6.4, which has to do with a cemetery company's obligation to report litigation to the Board and to the Department of Law and Public Safety, and recodifies the rule to N.J.A.C. 3:41-5.4.

The Board proposes to repeal N.J.A.C. 3:40-6.10, which has to do with acquisitions of land, but has moved the substantive aspects of that section to the new N.J.A.C. 3:41-13.6(a)2.

The proposed amendments to N.J.A.C. 3:40-6.5 and 6.7 clarify language in those sections, but effect no substantive change. Also, they are recodified as sections within N.J.A.C. 3:41-5.

The proposed amendments to N.J.A.C. 3:40-6.12 specify what must be submitted with applications for cemetery salesperson licenses. This section has been recodified to N.J.A.C. 3:41-9.

Social Impact

The proposed amendments and new rules should have a beneficial social impact. Currently, cemetery companies get only minimal guidance from existing rules concerning what they must submit with various applications. As a result, they must call the Board to find out what they must submit, or take a chance that what they submit will be inadequate. These proposed amendments and new rules would specify in advance exactly what materials cemetery companies must submit with various applications to the Board, thus allowing cemeteries to assemble the needed materials more efficiently.

By specifying what is to be submitted, the proposed amendments and new rules would merely place into regulatory form what the Board office already requires in connection with applications made to it. Stated another way, the proposal would not require cemetery companies to submit any additional information or materials than is currently required pursuant to Board policy.

Because the proposed amendments and new rules apply mainly to applications submitted to the Board by cemetery companies and their employees, the Board anticipates that there will be no direct social impact on the general public. To the extent that the proposal facilitates cemeteries arranging their affairs in the most efficient manner, there should be some indirect social benefits to the general public.

Economic Impact

The economic impact of the proposed amendments and new rules should be beneficial because they will specify exactly what cemetery companies are required to submit to the Board in connection with applications. Applicants will incur the various administrative costs involved in preparing and filing application materials. A cemetery company seeking to sell land dedicated to cemetery purposes will also bear costs of one or two independent appraisals of the land. Cemetery companies will know ahead of time what is entailed in submitting an application. Therefore, they can make more informed judgments regarding whether they wish to apply, and they will be able to assemble the application materials more efficiently. In short, the proposed amendments and new rules should facilitate the Board's application process and will thereby assist cemeteries to organize their operations in ways which are most efficient.

While the Board does not anticipate direct benefits to the public, there should be indirect benefits which are passed along to customers as a result of more efficient operations of cemetery companies.

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To the extent that the proposed amendments and new rules clarify existing language and requirements, they should result in lessened legal charges paid by cemeteries to their legal counsels for advice.

Because these proposed amendments and new rules apply mainly to applications submitted to the Board by cemetery companies and their employees, the Board anticipates that there will be no direct economic impact on the general public. To the extent that the proposal facilitates cemeteries arranging their affairs in the most efficient manner, there should be some indirect economic benefits to the general public.

Regulatory Flexibility Statement

The vast majority of cemetery companies are small businesses, as the time is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments and new rules would establish no record keeping or reporting requirements for cemetery companies.

With regard to compliance requirements, the proposed amendments and new rules would specify in rules what is required to be submitted in applications (although they would not require any materials to be submitted which are not already currently required by Board policy). Therefore, a regulatory flexibility analysis of these burdens is required.

Every effort has been made to minimize compliance burdens, although submissions must be adequate to inform the Board so it can decide whether or not to approve applications. For example, several of the applications require the submission of certifications. The Cemetery Board has drafted form certifications for some of these purposes (for example, bulk sales, and criminal background questionnaire Form 2), which it currently sends to applicants as needed. This practice should eliminate, or at least minimize, the need for legal services to draft these documents. In addition, form certifications have the advantage of standardizing the language which is considered by the Board.

Other certifications provide needed representations regarding the various transactions and assure the Board that the transaction comports with Legislative intent. Each of these statements is deemed necessary for effective oversight.

Other documents required to be submitted are copies of contracts or leases. These documents are essential to an adequate review by the Board because they are the most accurate representation of the agreement between the parties. Submitting them is a minimal burden because they should be readily available to all applicants and are easily copied.

Similarly, some applications require the submission of the basic documents of corporate or partnership organization. These documents will give the Board the basic information it needs about the legal authority of the entities to engage in the transaction. Their copying and submission should impose no undue burden on applicants.

The Board's review of the materials required to be submitted in these proposed amendments and new rules is essential to its making an informed determination on the merits of applications. Moreover, submitting these materials will not, in the opinion of the Board, be burdensome to applicants. Because of the Board's need for the materials specified, it creates no exception for small businesses. To do so would jeopardize its proper oversight of these transactions. The Board is keenly aware of the importance of its decisions with regard to many of these applications. As a result of these considerations, no differing standards are created for small businesses.

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

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER [6.]**13.** [FORMAT OF APPLICATIONS REQUIRED TO BE FILED] **APPLICATIONS**

[3:40-6.1]**3:41-13.1** Application for certificate of authority

(a) **An application for a certificate of authority by a cemetery company organized on or after December 1, 1971 shall be filed as follows:**

1. The [cemetery board] **Board** shall establish a register of applications for certificates of authority for all [cemeteries] **cemetery companies** organized **on or** after December 1, 1971[.]**;**

[(b) All applications] **2. Each application** shall, upon [their] **its** receipt at the office[s] of the [board] **Board**, be recorded in this register. [In addition there shall be paid along] **An applicant shall submit** with each [such] application a nonrefundable fee of $100.00 payable to the [board] **New Jersey Cemetery Board.**

[(c)]**3.** The register of applications [heretofore mentioned] shall be open to the inspection [of any member of] **by** the public during the normal business hours [at the office] of the [board] **Board office.**

[(d)]**4.** If[,] any member of the public files, **at the office of the Board,** a written objection to [the grant of such] an application for a new cemetery company [at the office of the board, and upon receipt of such objection], the [board] **Board** shall **schedule a public hearing and shall** notify [this objecting member] **the objector** and the applicant of the time and the place for [public] **such** hearing [which it shall conduct for the purpose of receiving evidence from the objecting member of the public and from the applicant].

[(e)]**5.** After the hearing has been held the grant or denial of the certificate of authority [applied for is] **shall be** filed in the register of applications.

6. An application for a certificate of authority shall include the following:

i. A completed application form for a certificate of authority;

ii. A completed information sheet;

iii. An application fee of $100.00, made payable to the New Jersey Cemetery Board;

iv. A copy of the certificate of incorporation pursuant to Title 15A of the New Jersey Statutes;

v. A copy of articles of incorporation and/or charter, and bylaws;

vi. A copy of the applicant's rules and regulations;

vii. A copy of the applicant's charges for interment spaces and services;

viii. A map of the area (for example, a tax map) which delineates the cemetery;

x. A statement and supporting evidence, if any, that the cemetery company will be able to meet the requirement of N.J.S.A. 8A:4-3 to establish an Initial Balance Fund of $25,000, except that a cemetery company operating as a crematory wholly independent and physically separated from any cemetery shall not be required to provide such a statement, nor shall a cemetery company which has been engaged in the operation of a cemetery prior to December 1, 1971 be required to provide such a statement; and

xi. Any additional information which the Board may require relevant to the application.

(b) An application for a certificate of authority by a cemetery company organized before December 1, 1971 shall be filed as follows:

1. An applicant shall submit with each application a nonrefundable fee of $100.00, payable to the New Jersey Cemetery Board, except that the applicant shall not be required to pay the application fee if it can demonstrate to the satisfaction of the Board that it no longer has cemetery land for sale and that it exists solely for the maintenance and preservation of the cemetery.

2. An application for a certificate of authority shall include the following:

i. A completed application for a certificate of authority;

ii. A completed information sheet;

iii. An application fee of $100.00, made payable to the New Jersey Cemetery Board, except as provided in (a)1 above;

iv. A copy of the certificate of incorporation or registration as a limited partnership, if applicable;

v. A copy of articles of incorporation, charter, and bylaws, and other fundamental organizational documents of the entity;

vi. A copy of the applicant's rules and regulations;

vii. A copy of the applicant's charges for interment spaces and services; and

viii. Any additional information which the Board may require relevant to the application.

[3:40-6.2]**3:41-13.2** [Petition] **Application** for dissolution of a cemetery company

(a) [A petition for dissolution must be filed with the board for its approval and must set forth the reasons for dissolution] **A cem-**

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etery company which wishes to dissolve shall file an application with the Board. The application shall include, but not be limited to, the following:

1. A certified statement by the board of managers or trustees of the cemetery company which:

i. Sets forth the reasons for dissolution;

ii. Identifies all of the assets and liabilities of the cemetery company, including any outstanding legal actions or matters which may result in legal actions, and sets forth the amounts of all such assets and liabilities;

iii. States that the cemetery company is transferring its cemetery property in good faith, and has concluded that, to the best of its knowledge, the transfer would not work an injustice on any party; and

iv. States that, when the dissolution becomes effective, the cemetery company will surrender its certificate of authority to the Board and cease cemetery activities;

2. A certified statement of the successor in interest which states that:

i. It agrees to accept all of the duties, liabilities, obligations, rights, and assets of the cemetery company, including the duty to maintain the cemetery;

ii. It holds a certificate of authority issued by the Board, or it is a religious corporation organized pursuant to either Title 16 of the New Jersey Statutes or a special act of the Legislature, or it is a religious society;

iii. If it is a religious corporation organized pursuant to either Title 16 of the New Jersey Statutes or a special act of the Legislature, or it is a religious society, burials in the cemetery will be restricted to members of the faith and families of members of the faith; and

iv. The successor in interest is accepting the transfer of the cemetery property of the cemetery company in good faith, and has concluded that, to the best of its knowledge, the transfer would not work an injustice on any party; and

3. A copy of the resolution of dissolution approved by a majority of the board of managers or trustees and by a majority of the lot owners voting at a lot owners meeting for which adequate notice was given, in accordance with N.J.S.A. 8A:3-17.

[3:40-6.3]**3:41-13.3** Merger or consolidation of [cemeteries] **cemetery companies**

[The approval of the board is required for any merger or consolidation of two or more cemetery companies. Adequate proofs shall be set forth in any consolidation or merger.] **(a) A cemetery company which wishes to merge into another cemetery company shall file an application with the Board which shall include the following:**

1. A copy of the agreement which would effect the merger;

2. A copy of the plan of merger, if any;

3. A description of the benefit to each cemetery company as a result of the merger; and

4. An information fact sheet from each cemetery company reflecting the following:

i. A list of officers;

ii. A list of the board of managers or trustees;

iii. The total acreage of the cemetery;

iv. The total acreage of cemetery which is developed;

v. The total acreage of the cemetery which is developed but not sold;

vi. The total acreage of the cemetery which is undeveloped; and

vii. A copy of the resolution of merger approved by a majority of the board of managers or trustees of each cemetery company, and by a majority of the lot owners of each cemetery company voting at a lot owners meeting for which adequate notice was given; and

5. Any other information relevant to the application.

[3:40-6.4]**3:41-5.4** Litigation involving a cemetery company **or cemetery**

[Whenever] **If** a cemetery company is [involved in] **a party to** any litigation, **it shall file** a copy of the complaint, [and so forth, must be forwarded to] **the answer, and the judgment, order, or settlement agreement resolving the matter with** the [board] **Board** and the [Attorney General since they are necessary parties to all litigation involving a cemetery company] **Division of Law within the Department of Law and Public Safety.**

[3:40-6.5]**3:41-5.5** Annual reports

(a) [A] **Each year, a** cemetery company shall file an annual report [acknowledged] **with the Board. The report shall be signed** in the presence of a notary public **and acknowledged.** [This] **The** report shall be filed with the board on a form established by the [board] **Board.** [This] **The** report shall include:

1. The extent of, and sources of augmentation [of] **to,** the maintenance and preservation fund;

2. (No change.)

3. A list of the securities in which [said trust funds are] **the corpus of the fund is** invested; **and**

4. [The proper fee as provided for in the statute in order] **A check for the per-interment charge as required by N.J.S.A. 8A:4-12(b), made payable to the New Jersey Cemetery Board, the proceeds from which shall be used** to defray the expense of the examination, **investigation** and administration **by the Board;**

[5.]**(b)** The **cemetery company shall file the** annual report required [under] **by** this section [shall be filed by the cemetery company] no later than 120 days after the close of the cemetery company's fiscal year.

[3:40-6.6 Request] **3:41-13.4 Application** for sale of cemetery lands

(a) A [petition for sale of] **cemetery company which wishes to sell** any land dedicated [for] **to** cemetery purposes shall [be filed] **file an application** with the [board and] **Board, which application** shall include **the following:**

1. A statement by the board of managers or trustees setting forth the size of the parcel to be sold, whether the parcel has been developed for cemetery use, the total acres of cemetery property prior to the sale, and the total acres of developed cemetery property prior to the sale; and

[1. Statement] **2. A statement by the board of managers or trustees** that the land is not in the judgment of the cemetery company necessary or suitable for interment purposes;

[2. Proof] **3. A statement by the board of managers or trustees** that [no interment has ever been made] **there are no interments** within the lands requested to be sold;

[3.]**4.** A statement **by the board of managers or trustees** that when a deed is [made] **drawn** for [this] **the** land it will include a prohibition [of the use of such] **against using the** land for any [purpose or uses] **activity** in which a cemetery company is [by the terms of N.J.S.A. 8A:5-3 specifically] prohibited from engaging [in] **by N.J.S.A. 8A:5-3;**

[4.]**5.** A statement **by the board of managers or trustees** that [a minimum] **at least** 15 per cent of the proceeds of the sale of [this] **the** land will be paid into the maintenance and preservation fund of the cemetery;

6. A resolution approving of the sale which is approved by a majority of the board of managers or trustees;

7. A certified statement by the board of managers or trustees and the officers of the cemetery company attesting whether or not any of them has a direct or indirect interest in the purchasing entity;

8. A certified statement by the purchasing entity, its officers, and its stockholders having a 20 percent or more share of issued voting stock or a 20 percent or more share of a partnership, attesting whether any of them has a direct or indirect interest in the cemetery company;

9. One appraisal of the property by an appraiser having no interest in either the cemetery company or the purchasing entity, except that if either the cemetery company or the purchasing entity or the principals of either have an interest in the other, two independent appraisals shall be submitted; and

[5. Such] **10. Any** other information [as] **which** may be required by the board [or as may be considered necessary] **regarding the application.**

(b) A committee of the Board may, if it deems it necessary, visit a cemetery submitting an application pursuant to this section to

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verify that the land to be sold is not necessary or suitable for interment purposes.

[3:40-6.7]**3:41-5.6** Rules and regulations of a cemetery company

[The] **A cemetery company may amend or supplement its** rules and regulations [of a cemetery company may be amended and/or supplemented by the cemetery company] by filing with the [board] **Board** such proposed amendments [and/or] **or** supplements, **or both**. This filing shall be accompanied by a filing fee payable to the [board] **New Jersey Cemetery Board, in accordance with N.J.S.A. 8A:5-4c.**

[3:40-6.8 Petition] **3:41-13.5 Application** for removal of unsightly monumentation

(a) [When] **If** a cemetery company [desires the removal of] **wishes to remove** an unsightly monument, railing, box or other form of monumentation from an interment space or lot [and when the cemetery company has not been able to], **it shall** notify the interment space owner, owners or other interested parties[, then] **and secure their written consent to the removal; however, if the cemetery company is unable to obtain the written consent, either because the owner failed to consent or because the cemetery after diligent effort was unable to locate the owner, it may submit** an application [shall be made] to the [board and] **Board, which application** shall include the following:

1. The reasons for removal of the monument, railing [and so forth], **box or other form of monumentation**;

2. A statement **by an officer of the cemetery company** that [no] **the cemetery company was unable, after diligent effort, to obtain** written permission [could be obtained] from the owner [or owners] of the interment space or lot;

3. A photograph of the monumentation sought to be removed; **and**

4. Any other information relevant to the application.

[3:40-6.9 Request] **3:41-13.6 Application** for enlargement of cemetery area by purchase

(a) [Before any land is added to an existing cemetery, a request must be made of the board for approval. This request should] **A cemetery company which wishes to purchase land and dedicate that land for cemetery purposes shall file an application with the board. The application shall** include the following:

1. A statement **by the board of managers or trustees** that the total area of the cemetery, **after the new land is added,** will not exceed the statutory [limit when this new area is added to the existing cemetery, except in] **limits set forth in N.J.S.A. 8A:6-1 and 8A:6-6, unless in the latter case the municipality has waived the limit. In** the case of a merger between two or more existing cemeteries, **such a statement shall not be required**;

2. [The purchase price] **A copy of the contract for the purchase of the property, which shall include, but shall not be limited to, the purchase price, the method of payment, the interest rate if any, and the size of the parcel to be purchased;**

3. A copy of the resolution of consent by the municipality where the cemetery is located, **as required by N.J.S.A. 8A:6-5; and**

4. Any other information relevant to the application.

[3:40-6.10 Request by a cemetery company to acquire new lands

Any request by a cemetery company to acquire lands for cemetery purposes must include the method of payment for these lands, the interest rate being paid, and the amount of land involved.]

[3:40-6.11]**3:41-13.7** Application [for approval] to lease or license unused cemetery lands

(a) [Any request] **An application** to lease or license unused cemetery lands shall include the following:

1. **In the case of a lease to a nonprofit, religious, educational or charitable organization pursuant to N.J.S.A. 8A:6-12:**

i. A **certified** statement [thet] **by the board of managers or trustees that** the lands to be leased will not be plotted for burial lots or, **if already plotted, that** burial lots therein **will not be** sold for burial purposes or otherwise used for cemetery purposes within two years following the [date of the request] **meeting of the board of managers or trustees approving the application**;

[2.]**ii.** A [showing that] **tax map, or other equivalent official map, of** the land in question **which indicates that it** abuts a public street or highway;

[3.]**iii.** A [showing that] **certified statement by** the prospective lessee **that it** is a nonprofit, religious, educational or charitable organization;

[4.]**iv.** A **certified** statement [as to] **by the prospective lessee describing** the expected use [by the prospective lessee emphasizing that] **to be made of the portion of land and addressing the question of whether** this use would [not] be distasteful to those who [may come upon that] **visit that** portion [or] **of** the cemetery presently used for burial purposes which [abut] **abuts** the land in question;

[5.]**v.** [A showing] **Evidence** that there is an access from the abutting public highway or street;

vi. A copy of the lease; and

vii. Any other information relevant to the application; and

2. With regard to a lease to a for-profit entity pursuant to N.J.S.A. 8A:6-2:

i. A statement by the board of managers or trustees that the parcel has not been laid out into burial plots or lots;

ii. A statement by the board of managers or trustees that the proceeds of the lease will be used to pay the debts and liabilities of the cemetery company or to improve the cemetery, or both;

iii. A statement by the prospective lessee that it does not engage, directly or indirectly, in an activity that which a cemetery company is prohibited from engaging in pursuant to N.J.S.A. 8A:5-3; and

iv. Any other information relevant to the application.

[3:40-6.12 Request] **3:41-9.7 Application** for license as a cemetery [salesman] **salesperson**

[All requests for licensing as a cemetery salesman should be made to the board at its Trenton Office in accordance with the provisions of the New Jersey Cemetery Act.] **(a) An applicant for an initial cemetery salesperson license shall submit the following:**

1. A completed application form;

2. A one inch by one inch face photograph, in good condition, and taken within the last year;

3. The examination fee as provided by N.J.S.A. 8A:9-10;

4. A completed certified consent certificate consenting to the criminal history investigation;

5. An F.B.I. Fingerprint Card, with legible prints, which is signed by the applicant and the officer who took the prints;

6. The criminal history investigation fee in the form of certified check or money order as set by the Federal Bureau of Investigation through the New Jersey State Police;

7. For applicants who have been convicted of a criminal offense, a completed criminal history questionnaire; and

8. For applicants who reside outside of this State, a completed designation of agent form.

(b) An applicant for a renewal of a cemetery salesperson license shall submit the following:

1. A completed application form;

2. A one inch by one inch face photograph, in good condition, and taken within the last year;

3. The renewal fee as specified by N.J.S.A. 8A:9-10; and

4. For applicants who reside outside of this State, a designation of agent form if no designation of agent form has ever been submitted to the board or if the designation of agent form previously submitted does not list the current agent for service of process.

3:41-13.8 Applications for bulk sales of interment spaces

(a) A certified statement by an officer of the cemetery company which wishes to sell interment spaces in bulk to a membership or religious corporation or society, or to an unincorporated association or society pursuant to N.J.S.A. 8A:9-7, shall submit an application to the board, which application shall include the following:

1. A copy of the contract of sale, which shall include the names of the parties, the number of interment spaces to be sold, the location of each, and the sales price;

2. A statement by the cemetery company that:

i. The transaction will conform to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

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ii. It will deposit into its maintenance and preservation fund at least 15 percent of the gross sales price of the interment spaces, or $25.00 per grave, whichever is greater, as payments are received;

iii. It is aware that, if the purchaser resells an interment space in the future, at least 15 percent of the gross sales price for similar interment spaces established by the cemetery company at the time of resale, or $25.00, whichever is greater, must be deposited into the maintenance and preservation trust fund of the cemetery company, except that a credit shall be given for any money previously paid into the maintenance and preservation fund in connection with the interment space; and

iv. It is selling the interment spaces in good faith and does not have any knowledge of any speculative intent on the part of the purchaser which would violate N.J.S.A. 8A:9-7;

3. A certified statement by the purchaser that:

i. It is a membership or religious corporation or society, or an unincorporated association or society within the meaning of N.J.S.A. 8A:1-1 and 8A:9-7;

ii. It will purchase the spaces pursuant to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

iii. The purchaser will resell or give the interment spaces, or the right to use the interment spaces, purchased in this bulk sale only to members, and the spaces will be provided solely for members and their families;

iv. If the purchaser resells any interment space in the future, it will transmit to the cemetery for deposit into the maintenance and preservation fund of the cemetery company at least 15 percent of the gross sales price for similar interment spaces established by the cemetery company at the time of resale, or $25.00, whichever is greater, but the purchaser shall receive a credit for any money previously paid into the maintenance and preservation fund in connection with the interment spaces; and

v. The purchaser is purchasing the interment spaces in good faith and does not have any speculative intent which would violate N.J.S.A. 8A:9-7; and

4. Any other information relevant to the application.

(b) A membership or religious corporation or society, or an unincorporated association or society, which wishes to sell interment spaces in bulk to another membership or religious corporation or society, or to an unincorporated association or society pursuant to N.J.S.A. 8A:9-7, shall submit an application to the board, which application shall include the following:

1. A copy of the contract of sale, which shall include the names of the parties, the number of interment spaces to be sold, the location of each, and the sales price;

2. A certified statement by the selling organization that

i. It is a membership or religious corporation or society, or an unincorporated association or society within the meaning of N.J.S.A. 8A:1-1 and N.J.S.A. 8A:9-7 of the New Jersey Cemetery Act;

ii. It will sell the spaces pursuant to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

iii. It is aware that at least 15 percent of the gross sales price of the interment spaces, or $25.00 per grave, whichever is greater, must be deposited into the maintenance and preservation fund of the cemetery company, and that the source of such deposit has been agreed to; and

iv. It is selling the interment spaces in good faith and does not have any knowledge of any speculative intent on the part of the purchaser which would violate N.J.S.A. 8A:9-7;

3. A certified statement by the purchasing organization that:

i. It is a membership or religious corporation or society, or an unincorporated association or society within the meaning of N.J.S.A. 8A:1-1 and 8A:9-7;

ii. It will purchase the spaces pursuant to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

iii. It will resell or give the interment spaces, or the right to use the interment spaces, only to its members, and that the spaces will be provided solely for members and their families;

iv. If the purchaser resells an interment space, it will transmit to the cemetery company for deposit into the maintenance and preservation fund of the cemetery company at least 15 percent of the gross sales price for similar interment spaces established by the cemetery company at the time of resale, or $25.00, whichever is greater, but the purchaser shall receive a credit for any money previously paid into the maintenance and preservation fund in connection with the interment spaces; and

v. It is purchasing the interment spaces in good faith and does not have any speculative intent which would violate N.J.S.A. 8A:9-7;

4. A statement by the cemetery company that:

i. It is aware that an amount equal to at least 15 percent of the sales price for the interment spaces must be deposited into the maintenance and preservation fund of the cemetery company when a membership or religious organization resells its interment spaces in bulk to another membership or religious organization, except that a credit shall be given for any amount previously paid into the maintenance and preservation fund in connection with each particular interment space;

ii. It is aware that, if the purchasing organization resells an interment space to a member, at least 15 percent of the gross sales price for an equivalent interment space established by the cemetery at the time of resale shall be deposited into the maintenance and preservation fund of the cemetery company, less a credit for any money previously paid into the maintenance and preservation fund in connection with that interment space; and

iii. To the best of its knowledge, the transaction is being undertaken in good faith, and neither the cemetery company, nor the selling organization, nor the purchasing organization have a speculative intent which would violate N.J.S.A. 8A:9-7; and

5. Any other information relevant to the application.

3:41-13.9 Standards for approving or disapproving applications

(a) The following factors shall militate toward approval of an application:

1. Approval will benefit the financial well-being of any cemetery company affected by the transaction;

2. Approval will result in better provision of services by any cemetery company; or

3. Approval will foster a statutory purpose, whether stated explicitly or fairly read into the statute.

3:41-13.10 Provisions applicable to all applications

(a) Applications and supporting materials shall be submitted in 12 copies, except that applications for bulk sales of interment spaces shall be submitted in three copies. One original of all certifications shall be submitted, but contracts, certificates of incorporation, articles of incorporation, and bylaws may be submitted as copies.

(b) The Board may, at its discretion, waive the submission of specified materials if it determines that the absence of those materials would have no substantial impact on its ability to make an informed decision on the application, or if the applicant submits substantially similar information in a form not specified, or if the Board already has the information in a satisfactory form.

(c) The Board may consider an application to be incomplete which lacks one of more of the items required to be submitted, and may defer processing until all of the materials have been submitted.

(d) Any misrepresentation of a material fact, or any omission of a material fact, in an application to the Board shall constitute a violation of the Act and shall make the person making the representation liable for a penalty as set forth in N.J.S.A. 8A:10-1.

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ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Endangered Plant Species Program

Proposed Readoption with Amendment: N.J.A.C. 7:5C

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-1 et seq., particularly N.J.S.A. 13:1B-15.146 through 13:1B-15.150 and N.J.S.A. 13:1B-15.151 through 13:1B-15.158; and 13:1D-9.

DEP Docket Number: 41-94-08/130.

Proposal Number: PRN 1994-515.

Submit written comments, identified by the DEP Docket Number above, by October, 19, 1994 to:

Janis E. Hoagland, Esq.
Administrative Practice Officer
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Endangered Plant Species Program rules, N.J.A.C. 7:5C, are set to expire on January 16, 1995. As required by the Executive Order, the Department of Environmental Protection (Department) has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, the Department proposes to readopt this chapter. The Department is also proposing to amend N.J.A.C. 7:5C-5.1, the Endangered Plant Species List, in order to add 33 plant species to the official list of endangered plant species native to the State, to delete 10 listed species which no longer qualify as endangered, and to update the scientific nomenclature for 26 listed species.

The Endangered Plant Species Program rules were promulgated to implement the Endangered Plant Species List Act (Act), N.J.S.A. 13:1B-15.151 through 15.158. The Act directed the Department's Division of Parks and Forestry to develop and adopt a list of plant species occurring in the State which are endangered due to the destruction, drastic modification or severe curtailment of their habitat, or for other reasons, natural or man-made. N.J.S.A. 13:1B-15.154. One of the purposes of the Act was to eliminate the confusion resulting from then-existing unofficial and sometimes conflicting lists of endangered plant species. N.J.S.A. 13:1B-15.152. The Act was also designed to aid in the incorporation of plant species preservation into government planning functions. N.J.S.A. 13:1B-15.152.

Under the Act and these rules, an "endangered species" is defined as any native plant species whose survival in the State or the nation is in jeopardy, including, but not limited to, plant species designated as listed, proposed, or under review by the Federal government as endangered or threatened throughout its range in the United States pursuant to the Endangered Species Act of 1973, 16 U.S.C. §1533 et seq., any additional species known or believed to be rare throughout its worldwide range, and any species having five or fewer extant populations within the State. N.J.S.A. 13:1B-15.153 and N.J.A.C. 7:5C-1.4.

The listing of plants on the official list of endangered plant species native to the State must be based on research, investigations and other available scientific data on plant species. N.J.S.A. 13:1B-15.154 and N.J.A.C. 7:5C-2.1. The Act provides for needed research and investigations, allows the Commissioner of the Department to cooperate with and accept funding from governmental agencies or private resources, and authorizes educational and informational programs to inform the public as to the status and significance of New Jersey's endangered plant species. N.J.S.A. 13:1B-15.155 through 15.157.

On January 16, 1990, the Department promulgated the Endangered Plant Species Program rules, N.J.A.C. 7:5C, which provide detailed procedures, standards and criteria for developing, adopting and revising the Endangered Plant Species List. See 22 N.J.R. 179(a). On June 4, 1990, the Department designated 304 species to the Endangered Plant Species List at N.J.A.C. 7:5C-5.1. See 22 N.J.R. 1743(a). The Endangered Plant Species List at N.J.A.C. 7:5C-5.1 was subsequently revised on August 19, 1991. See 23 N.J.R. 2507(b).

A summary of the text of each subchapter and the significant sections in N.J.A.C. 7:5C follows:

N.J.A.C. 7:5C-1, General Information, contains the general provisions of these rules, including their purpose and scope, construction, severability, and the definitions of key terms used throughout this chapter.

N.J.A.C. 7:5C-2, Development and Adoption of Endangered Plant Species List, outlines the Department's procedures for researching and investigating the eligibility of native plant species for inclusion on the Endangered Plant Species List, and documenting this information in the Department's Natural Heritage Database. N.J.A.C. 7:5C-2.1. In addition, this subchapter sets forth the criteria for designating plant species as endangered. N.J.A.C. 7:5C-2.2.

N.J.A.C. 7:5C-3, Plant Species of Concern, authorizes the Department to maintain a list of plant species of concern for the purpose of monitoring the status of the State's flora and to serve as a working list for the transition of species to and from the Endangered Plant Species List. The list of plant species of concern consists of those species whose populations are monitored by the Department's Natural Heritage Database but which are not on the Endangered Plant Species List.

N.J.A.C. 7:5C-4, Public Participation, provides that persons with information that will help the Department in determining whether a plant species qualifies under the criteria at N.J.A.C. 7:5C-2.2 as endangered may submit such information to the Department.

N.J.A.C. 7:5C-5, Endangered Plant Species List, contains the official list of endangered plant species required by the Act.

The Department proposes to amend N.J.A.C. 7:5C-5.1, the Endangered Plant Species List. N.J.A.C. 7:5C-2.1(c) specifies that the Department will, on the basis of new or updated information in the Natural Heritage Database, review the Endangered Plant Species List at least annually to determine if additions or deletions to the list are needed based on the criteria listed at N.J.A.C. 7:5C-2.2. After this annual review, the Department may propose and adopt, pursuant to the Administrative Procedure Act, revisions to the Endangered Plant Species List. N.J.A.C. 7:5C-2.1(c). However, the Department may not propose to remove species designated to the Endangered Plant Species List pursuant to N.J.A.C. 7:5C-2.2(a)2 unless they are no longer listed, proposed, or under review by the Federal government. See N.J.S.A. 13:1B-15.153 and N.J.A.C. 7:5C-2.1(c).

The current Endangered Plant Species List contains 308 native plant species. The Department proposes to amend N.J.A.C. 7:5C-5.1 in order to add 33 plant species to the official list of endangered plant species native to the State, to remove 10 listed species, and to update the scientific nomenclature for 26 listed species. These revisions are current as of the last date of review of the list on January 5, 1993. Adoption of the proposed revisions will result in a net addition of 23 species to the list, bringing the total number of listed species to 331.

A summary of the proposed changes to the Endangered Plant Species List, N.J.A.C 7:5C-5.1, follows:

1. The Department is proposing to add the following 33 native plant species to the list:

Scientific Name	Common Name
Amaranthus pumilus	sea-beach pigweed
Ammannia latifolia	Koehn's tooth-cup
Antennaria neglecta var. canadensis	Canada pussytoes
Atriplex subspicata	orache
Bidens bidentoides	bur-marigold
Bidens eatonii	Eaton's bur-marigold
Cardamine maxima	large-leaved toothwort
Carex albursina	sedge
Carex amphibola var. amphibola	narrow-leaved sedge
Carex arctata	drooping woodsedge
Carex joorii	cypress-swamp sedge
Carex lupuliformis	hop-like sedge
Carex peckii	white-tinged sedge
Cornus amonum var. schuetzeana	silky dogwood
Cuscuta indecora	collared dodder
Cyperus hystricinus	flatsedge
Cyperus plukenetii	Plukenet's flatsedge
Cyperus schweinitzii	Schweinitz's flatsedge
Cyperus tenuifolius	low flatsedge
Eleocharis minima	small spikerush
Filipendula rubra	queen-of-the-prairie

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Gnaphalium helleri	Heller's everlasting
Hypericum adpressum	Barton's St. John's-wort
Isoetes tuckermanii	Tuckerman's quillwort
Lemna perpusilla	minute duckweed
Lemna valdiviana	pale duckweed
Maianthemum canadense var. interius	Western wild lily of the valley
Pycnanthemum clinopodioides	basil mountain mint
Pyrola chlorantha	greenish-flowered wintergreen
Rhexia interior	showy meadowbeauty
Smilacina trifolia	three-leaved Solomon's seal
Suaeda rollandii	sea blight
Valerianella umbilica	corn-salad

A basis and background document containing detailed information on the suitability of each of the 33 species herein proposed for inclusion of the Endangered Plant Species List under the criteria at N.J.A.C. 7:5C-2.2 has been filed with the Office of Administrative Law as part of this proposal. Copies of the basis and background document are available from the Office of Administrative Law and from the Office of Natural Lands Management, Station Plaza Building 4, 22 S. Clinton Avenue, Trenton, New Jersey, (609) 984-1339.

2. The Department is proposing to remove six native plant species from the list because additional fieldwork, documented in the Department's Natural Heritage Database, has shown that these species occur in the State more frequently than previously determined (that is, the estimated total number of occurrences in the State is greater than five). Therefore, these six species no longer qualify for designation under N.J.A.C 7:5C-2.2(a)4. In addition, these species do not qualify for designation under any other criteria at N.J.A.C. 7:5C-2.2(a). These six species are:

Scientific Name	Common Name
Agrimonia microcarpa	small-fruited groovebur
Cuscuta polygonorum	smartweed dodder
Cyperus engelmannii	Engelmann's flatsedge
Cyperus lancastriensis	Lancaster flatsedge
Geum vernum	spring avens
Triadenum fraseri	Fraser's St. John's wort

3. The Department is proposing to remove four plant species from the list because information gained through recent studies, taxonomic revisions or evaluations, and documented in the Natural Heritage Database, have resulted in reduced taxonomic rank or uncertain taxonomic standing for these species in New Jersey (that is, these taxa are no longer recognized by the Department as distinct species). Therefore, these species no longer qualify as endangered under the definition of "endangered species" at N.J.A.C. 7:5C-1.4 and the designation criteria at N.J.A.C. 7:5C-2.2(a). These four species are:

Scientific Name	Common Name
Aster pringlei	Pringle's aster
Carex woodii	Wood's sedge
Potamogeton richarsonii	Richard's pondweed
Stylosanthes riparia	riparian pencil flower

4. The Department is proposing to update the scientific nomenclature for 26 listed species to reflect the currently recognized nomenclature for each species. All nomenclatural revisions are in accordance with the Manual of Vascular Plants of Northeastern United States and Adjacent Canada, Second Edition, by H.A. Gleason and A. Cronquist, 1991. These nomenclature changes for these 26 species are as follows:

From	To
Agropyron trachycaulum	Elymus trachycaulus
Amelanchier humilis	Amelanchier sanguinea
Armoracia aquatica	Armoracia lacustris
Aster lucidulus	Aster firmus
Aster praealtus var. angustior	Aster praealtus
Breweria pickeringii var. caesariense	Stylisma pickeringii
Carex foenea	Carex siccata
Claytonia sp.	Claytonia virginica var. hammondiae
Convolvulus spithamaeus	Calystegia spithamea
Cynoglossum boreale	Cynoglossum virginianum var. boreale
Cyperus polystachyos var. texenesis	Cyperus polystachyos
Eleocharis pauciflora var. fernaldii	Eleocharis pauciflora
Eleocharis verrucosa	Eleocharis tenuis var. verrucosa
Eriophorum spissum	Eriophorum vaginatum var. spissum
Hieracium canadense var. fasciculatum	Hieracium kalmii
Isoetes macrospora	Isoetes lacustris
Liatris borealis	Liatris scariosa var. novae-angliae
Manisuris rugosa	Coelorachis rugosa
Megalodonta beckii	Bidens beckii
Phlox divaricata var. divaricata	Phlox divaricata
Scheuchzeria palustris ssp. americana	Scheuchzeria palustris
Sisyrinchium montanum var. crebrum	Sisyrinchium montanum
Stellaria calycantha	Stellaria borealis
Uvularia pudica var. nitida	Uvularia puberula var. nitida
Vulpia sciurea	Vulpia elliotea
Xyris flexuosa	Xyris caroliniana

5. The Department is proposing to amend the existing listing of six species in order to correct typographical errors.

Because endangered plant species occupy habitats throughout the State, primarily in undeveloped rural and suburban areas, the proposed readoption of N.J.A.C. 7:5C and the proposed amendment of the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, will have Statewide effect. The proposed readoption and amendment are designed to promote research, education and informed planning and management decisions. Neither the proposed readoption nor the proposed amendment contain any prohibitions or enforcement mechanisms.

Social Impact

Both the proposed readoption and the proposed amendment are expected to have a positive social impact by increasing the awareness of and concern by the general public and land use planners and managers for the status of the State's floral diversity. The readoption of this chapter and the amendment of the Endangered Plant Species List will have positive consequences for that segment of the population involved in conservation, land management and planning decisions by focussing their attention and efforts on an updated list of endangered plant species.

Economic Impact

Neither the proposed readoption nor the proposed amendments contain direct regulatory requirements or impose fees and, therefore, will not have any direct economic impact on the citizens of the State. Readoption of this chapter and the amendment of the Endangered Plant Species List may have a positive economic impact on local and State government planning functions by increasing the efficiency by which endangered plant species are considered in the planning process.

Environmental Impact

Adoption of the updated Endangered Plant Species List will have a long term positive environmental impact because research, investigations and public education on endangered plant species will more accurately reflect the endangered status of the State's native flora. This will enhance the Department's efforts to maintain the state's floral diversity, thereby contributing to the stability and viability of ecosystems. Because many endangered plant species occupy specialized and often harsh habitats, such as sand dunes, rock faces, bogs and mountain tops, their preservation will aid in soil development, in preventing wind and water erosion, and in promoting water retention. In addition, maintaining a diverse flora within the State is essential to the conservation of wildlife. All of these factors will result in an overall enhancement of the environment and the quality of life for State citizens.

Regulatory Flexibility Statement

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed readoption and amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses since the rules proposed for readoption impose requirements on the Department and not on members of the general public.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:5C.

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

7:5C-5.1 Endangered Plant Species List

(a) The following plant species are designated as endangered plant species:

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1.

Scientific Name	Common Name
...	
[Agrimonia microcarpa	small-fruited groovebur
Agropyron trachycaulum	slender wheatgrass]
...	
Amaranthus pumilus	**sea-beach pigweed**
[Amelanchier humilis	running serviceberry]
Amelanchier sanguinea	**running serviceberry**
Ammannia latifolia	**Koehn's tooth-cup**
...	
Antennaria neglecta var. canadensis	**Canada pussytoes**
...	
[Armoracia aquatica	lake cress]
Armoracia lacustris	**lake cress**
...	
Aster firmus	**shining aster**
[Aster lucidulus	shining aster]
Aster praealtus	**willow-leaved aster**
[Aster praealtus var anguistior	willow-leaved aster
Aster pringlei	Pringle's aster]
...	
Atriplex subspicata	**orache**
Bidens beckii	**water-marigold**
Bidens bidentoides	**bur-marigold**
Bidens eatonii	**Eaton's bur-marigold**
...	
Boltonia asteroides var. glastifolia	boltonia
...	
[Breweria pickeringii var caesariense	Pickering's morning-glory]
...	
Calystegia spithamea	**erect bindweed**
...	
Cardamine maxima	**large-leaved toothwort**
...	
Carex albursina	**sedge**
...	
Carex amphibola var. amphibola	**narrow-leaved sedge**
...	
Carex arctata	**dropping woodsedge**
...	
[Carex foenea	dry-spiked sedge]
...	
Carex joorii	**cypress-swamp sedge**
...	
Carex lupuliformis	**hop-like sedge**
...	
Carex peckii	**white-tinged sedge**
...	
Carex siccata	**dry-spiked sedge**
...	
[Carex woodii	Wood's sedge]
...	
[Claytonia sp.	Hammond's yellow spring beauty]
Claytonia virginica var. hammondiae	**Hammond's yellow spring beauty**
...	
Coelorachis rugosa	**wrinkled jointgrass**
...	
[Convolvulus spithamaeus	erect bindweed]
...	
Cornus amomum var. schuetzeana	**silky dogwood**
...	
Cuscuta indecora	**collared dodder**
[Cuscuta polygonorum	smartweed dodder
Cynoglossum boreale	northern wild comfrey]
Cynoglossum virginianum var. boreale	**northern wild comfrey**
[Cyperus engelmannii	Englemann's flatsedge]
Cyperus hystricinus	**flatsedge**
[Cyperus lancastriensis	Lancaster flatsedge]
Cyperus plukenetii	**Plukenet's flatsedge**
Cyperus polystachyos	**coast flatsedge**
[Cyperus polystachyos var texensis	coast flatsedge]
...	
Cyperus schweinitzii	**Schweinitz's flatsedge**
Cyperus tenuifolius	**low flatsedge**
...	
Eleocharis minima	**small spikerush**
Eleocharis pauciflora	**few-flowered spikerush**
[Eleocharis pauciflora var fernaldii	few-flowered spikerush]
Eleocharis tenuis var. verrucosa	**spikerush**
...	
[Eleocharis verrucosa	spikerush]
...	
Elymus trachycaulus	**slender wheatgrass**
...	
[Eriophorum spissum	sheathed cottongrass]
...	
Eriophorum vaginatum var. spissum	**sheathed cottongrass**
...	
Filipendula rubra	**queen-of-the-prairie**
...	
[Geum vernum	spring avens]
...	
Gnaphalium helleri	**Heller's everlasting**
...	
[Hieracium canadense var fasciculatum	Canada hawkweed]
Hieracium kalmii	**Canada hawkweed**
...	
Hypericum adpressum	**Barton's St. John's-wort**
...	
Isoetes lacustris	**lake quillwort**
[Isoetes macrospora	lake quillwort]
...	
Isoetes tuckermanii	**Tuckerman's quillwort**
...	
Lemna perpusilla	**minute duckweed**
Lemna valdiviana	**pale duckweed**
[Liatris borealis	northern blazing star]
Liatris scariosa var. novae-angliae	**northern blazing star**
...	
Maianthemum canadense var. interius	**Western wild lily of the valley**
...	
[Manisuris rugosa	wrinkled jointgrass
Megalodonta beckii	water-marigold]
...	
Ophioglossum vulgatum var. pycnostichum	sheathed adder's tongue
...	
Phlox divaricata	**wild blue phlox**
[Phlox divaricata var divaricata	wild blue phlox]
...	
Platanthera flava var. flava	southern [rein] **rain** orchid
...	
[Potamogeton richarsonii	Richard's pondweed]
...	
Pycnanthemum clinopodioides	**basil mountain mint**
Pyrola chlorantha	**greenish-flowered wintergreen**
...	
Rhexia interior	**showy meadowbeauty**
...	
Scheuchzeria palustris	**arrow-grass**
[Scheuchzeria palustris ssp americana	arrow-grass]
...	
Sisyrinchium montanum	**strict blue-eyed grass**
[Sisyrinchium montanum var crebrum	strict blue-eyed grass]
Smilacina trifolia	**three-leaved Solomon's seal**
...	
Stachys palustris var. homotricha	marsh hedge-nettle
Stellaria borealis	**northern stitchwort**
[Stellaria calycantha	northern stichwort]
...	

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Stylisma pickeringii	**Pickering's morning-glory**
[Stylosanthes riparia	riparian pencil flower]
Suaeda rollandii	**sea blight**
...	
[Triadenum fraseri	Fraser's St. John's-wort]
...	
Trichomanes sp. 1	filmy fern
...	
Trollius laxus ssp. laxus	spreading globe flower
...	
Uvularia puberula var. nitida	**pine barren bellwort**
[Uvularia pudica var nitada	pine barren bellwort]
...	
Valerianella umbilica	**corn-salad**
...	
Vulpia elliotea	**squirrel fescue**
[Vulpia sciurea	squirrel fescue]
...	
Xyris caroliniana	**sand yellow-eyed grass**
...	
[Xyris flexuosa	sand yellow-eyed grass]
...	

(a)

ENVIRONMENTAL REGULATION

Sewage Infrastructure Improvement Act Grants Proposed Readoption With Amendments: N.J.A.C. 7:22A

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:25-23 et seq., 40:55D-93 et seq., 58:10A-1 et seq., 58:11A-1 et seq., 13:1D-1 et seq., P.L. 1989, c.181 and P.L. 1990, d.28.

DEP Docket Number: 40-94-08/67.

Proposal Number: PRN 1994-516.

A **public hearing** concerning this proposal will be held on:

Thursday, October 13, 1994 at 10:00 A.M.
Municipal Wastewater Assistance Offices
Large Conference Room
1333 Brunswick Avenue
Trenton, New Jersey

Submit written comments, identified by the DEP Docket Number given above, by October 19, 1994 to:

Janis E. Hoagland, Administrative Practice Officer
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

Pursuant to the requirements of Executive Order No. 66(1978), N.J.A.C. 7:22A is set to expire on February 5, 1995. The Department of Environmental Protection (Department) has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Accordingly, the Department is proposing to readopt the rules developed pursuant to the New Jersey Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq. ("Act") with minor amendments. The Act established various requirements for mapping, monitoring and combined sewer overflow and interconnection/cross-connection abatement which are codified within the rules. In addition, numerous grants have been awarded, and therefore the proposed readoption with amendments is necessary for the on-going administration of these grants.

The Department is herein proposing amendments to N.J.A.C. 7:22A which will, among other things, allow the Department to utilize funds available under the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) for activities conducted pursuant to the Sewage Infrastructure Improvement Act. This proposed change is particularly important since, of the $33.5 million originally authorized under the Sewage Infrastructure Improvement Act, nearly $21 million was made unavailable as a result of the budgetary process in 1994. This and other changes are described below.

N.J.A.C. 7:22A was originally adopted by the Department effective February 5, 1990 (see 22 N.J.R. 368(a)). The Sewage Infrastructure Improvement Act has two main components: (1) to address discharges from combined sanitary and stormwater sewer systems throughout the State and (2) to map and investigate stormwater sewer systems in Atlantic, Cape May, Monmouth and Ocean counties. The Act, which became effective on August 3, 1988, was designed to address nonpoint and point sources of pollution which discharge from stormwater sewer systems and combined sewer overflow points. The New Jersey Legislature has declared that these sources of pollution contribute greatly to the biological and chemical degradation of coastal and surface waters of the state. The Act recognizes that nonpont sources of pollution create public health dangers and mandate beach and shellfish bed closings by contributing high levels of bacteria to surface waters through stormwater sewer systems. The Act also recognizes that overflows of raw sewage from combined sewer systems are another major source of water pollution. The Act establishes various requirements for municipalities and public entities to address these pollution problems. The rules reinforce the statutory requirements and establish the procedures by which the Department provides grant funds for various stormwater management and combined sewer overflow abatement planning and design activities.

The following is a summary of the provisions of each subchapter of N.J.A.C. 7:22A proposed for readoption and/or amendment:

Subchapter 1, General Provisions, identifies the scope and purpose of the rules and includes definitions which are applicable to the entire chapter. Several sections in this subchapter describe the remedies available to the Department in instances where a grantee has not complied with the provisions of the rules, such as withholding of funds, stop-work orders and termination or recision of grants. Other sections within this subchapter identify requirements for Departmental access to facilities, records pertaining to projects, administrative hearings and publicity. The Department is proposing to amend N.J.A.C. 7:22A-1.2 to state that the rules govern the Department's disbursement of funds available under the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) for activities under the Sewage Infrastructure Improvement Act. On February 26, 1990, the Department was advised by the Attorney General's office that the "monies available under the Bond Act may be used to finance the planning and design costs of stormwater management and (combined) sewer overflow abatement projects identified by the DEP Commissioner pursuant to Section 28 of the Bond Act." While the proposed amendments will enable the use of bond act funds for planning and design activities, the bond act funds will continue to be available for the construction of combined sewer overflow abatement projects and stormwater management facilities under N.J.A.C. 7:22-3, 4 and 5, the rules governing the Wastewater Treatment Financing Program (WTFP). Accordingly, the Department is also proposing changes to the definitions of "Combined Sewer Overflow Account," "Fund" and "Interconnection/Cross-Connection Abatement Account" at N.J.A.C. 7:22A-1.4 and to the Fund procedures rules at N.J.A.C. 7:22A-1.5.

Finally the definition of "Department" in N.J.A.C. 7:22A-1.4 is being amended to reflect the recent reorganization of the Department.

Subchapter 2, Grant Agreement Procedures and Requirements, includes provisions regarding the processing of grant agreements and modifications to grant agreements, and identifies conditions which are applicable to all grant awards made under this chapter. Other sections address such issues as the disbursement of funds to grantees, grant amendments and administrative or other changes, assignment under a grant agreement and unused funds. The Department is proposing only one change to this subchapter, at N.J.A.C. 7:22A-2.4(d), to delete "and Energy" from the Department's name.

The Sewage Infrastructure Improvement Act requires all municipalities with stormwater sewer systems discharging into the salt waters of Monmouth, Ocean, Atlantic or Cape May counties (referred to as "affected municipalities") to adopt a final map of their sanitary and stormwater sewer systems. In recognition of the significant amount of work involved, the Department took a phased approach to implementation of the mapping and investigation requirements and this approach is reflected in the rules. Subchapter 3, Preliminary Mapping and Inventory, provides a mechanism to award funds to affected municipalities to inventory their sanitary/stormwater systems and identify stormwater outfalls. The subchapter includes sections regarding eligibility, appli-

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cation procedures, reporting and inventory requirements and allowable project costs for preliminary mapping activities. Also included are sections which describe the Department's evaluation of grant applications and the approval or disapproval of applications. The Department is not proposing changes to this subchapter.

Subchapter 4 is entitled Final Mapping and Monitoring Requirements. In accordance with the Act, a final map is required to locate all sanitary and stormwater sewer lines within the geographic boundaries of an affected municipality. The final map must also identify all cross-connections and known interconnections between stormwater and sanitary sewer systems and indicate whether the cross-connections have received a permit from the Department. The rules provide a mechanism to award funds to affected municipalities to prepare detailed maps of their sanitary/stormwater systems and identify interconnections and/or cross-connections. In addition, the affected municipalities are required to monitor the water quality at the outfall locations for any stormwater sewer systems that discharge to salt waters. The subchapter includes sections which identify uniform standards for the preparation of final maps, investigative priority listing and monitoring requirements to identify interconnections and/or cross-connections. Also included are sections dealing with application procedures, application evaluation, the approval or disapproval of grant applications and allowable costs.

The Department is proposing changes to N.J.A.C. 7:22A-4.2(f) to modify the deadline by which affected municipalities must submit a quarterly monitoring plan. The existing rule, which requires submittal within one month after the adoption of a final map, is proposed to be modified to require submittal of the monitoring plan with the final map or within 60 days of adoption of this rule, whichever is later. This proposed change will establish a uniform deadline by which all affected municipalities will be required to submit a quarterly monitoring plan. The Department is also proposing changes to N.J.A.C. 7:22A-4.3(j), 4.4(a), and 4.7(a) to reflect the correct administrative code citation for the Surface Water Quality Standards, which were recently recodified from N.J.A.C. 7:9-4 to N.J.A.C. 7:9B.

The Department is proposing a change to the investigative requirements in N.J.A.C. 7:22A-4.5 to allow the Department discretion to direct municipalities on investigative techniques for the identification of interconnections and cross-connections. In some instances, the mapping will demonstrate that the stormwater sewer system cannot be influenced by the sanitary sewer system, for instance, when the sanitary system is located well below the stormwater system. In these cases, the Department will direct the municipal investigation to identify nonpoint sources of pollution that are contaminating the system. Therefore, the investigative mechanism may be different from that set forth in the rule. In addition, when municipalities are conducting quarterly monitoring, the Department may limit the investigation requirements, for instance, when bacteria levels in the discharge still exceed the standards set forth in N.J.A.C. 7:22A-4.7 even though a thorough investigation of the system has been conducted and the source of the contamination has either been eliminated or identified as a nonpoint source. If the source of contamination is from a nonpoint source, it will be addressed under N.J.A.C. 7:22A-4.5(e)2. If the source of the contamination has been eliminated and no other interconnection or cross-connection can be found, it would be futile for the municipality to conduct another investigation of the system. Therefore, the proposed change to the investigative requirements allows the Department to determine if a municipality should be required to reinvestigate its stormwater sewer system when excessive levels of bacteria are found during quarterly monitoring.

The Department is proposing to change the time of initiation of outfall monitoring activities in N.J.A.C. 7:22A-4.8(a) from the first month following the submittal of the final map to the first month following Department approval of the final map. This will allow the Department adequate time to review the affected municipality's final map and its priority outfall designation process and to establish, with the municipality, a monitoring strategy which satisfies the requirements of the Act before outfall monitoring is begun.

Subchapter 5 is reserved.

The Sewage Infrastructure Improvement Act also requires all public entities which own or operate a combined sanitary and stormwater sewer system to provide appropriate abatement measures, approved by the Department, at any combined sewer overflow point where a NJPDES permit pursuant to N.J.S.A. 58:10A-1 et seq. is required. Combined sanitary and stormwater sewer systems, by definition, discharge untreated sewage during rain events. These discharges are a suspected source of solids/floatables debris in the State's coastal waters. As an initial step to meet the goals of the Act, all combined sewer overflow systems must eliminate all dry weather discharges and reduce solids/floatables in the discharges.

Subchapter 6, Combined Sewer Overflow Account Procedures and Requirements, includes provisions regarding planning and/or design grant awards for combined sewer overflow abatement projects. The subchapter also includes sections which address the prioritization of projects, application procedures, allowable project costs, disbursements, force account work and project initiation.

The Department is proposing to delete N.J.A.C. 7:22A-6.4(c) as it is unnecessary. The existing provisions at N.J.A.C. 7:22A-6.4(a) and (b) fully address the criteria for project priority. Further, the Department will work with project sponsors in order to provide funding as soon as possible.

The Department is proposing to modify N.J.A.C. 7:22A-6.5 to recognize that the original intent of the limitations placed on combining various Federal and State funding mechanisms to finance a particular project or scope of work was to prohibit a project sponsor's receiving a double benefit (that is, receiving funding through two financing programs for the same cost). This provision now clearly allows funding for the same scope of work, but prohibits the funding of the same work within that scope.

At N.J.A.C. 7:22A-6.6, the Department proposes to delete the provisions regarding project bypassing. With the availability of funding under the 1989 Bond Act, eligible projects will be identified within an appropriations bill. Project bypassing will be unnecessary, since the Department will continue to work with project sponsors whose application documents do not satisfy program requirements until the project application can be certified for funding. While some project applications may receive approval before others, there is no need to bypass such other applicants because their eligibility is maintained pending the completion and approval of their projects' applications. In addition, amendments are proposed to N.J.A.C. 7:22A-6.8(f) to reflect the deletion of bypassing and to include notification by the Department to applicants with incomplete applications. N.J.A.C. 7:22A-6.9(b) also proposes to delete reference to bypassing and indicates that project applications will either be certified for funding or deferred. As explained previously, if a project application is deferred, the Department will continue to work with the applicant until the project is approved, which may be later in the funding cycle or at a future time.

Amendments are also being proposed to N.J.A.C. 7:22A-6.15 to link those projects which will be required to conduct value engineering (a specialized cost evaluation technique) to the Federal requirement as established in the Clean Water Act amendments. The current rule requires value engineering if the estimated building costs exceed $10 million. It is anticipated that the Federal statute will raise or delete this $10 million trigger for compliance with the value engineering requirement and the Department expects to propose this change to the value engineering requirements under the Wastewater Treatment Financing Program (WTFP) at N.J.A.C. 7:22A-3.37 and 4.37 in the near future. The proposed change to N.J.A.C. 7:22A-6.15 will enable projects that complete planning and design under these rules to meet the requirements of the WTFP rules.

In addition to mapping and monitoring requirements, the affected municipalities must eliminate or cause to be eliminated all unpermitted cross-connections and interconnections between their stormwater sewer systems and sanitary sewer systems. Subchapter 7, Interconnection and Cross-connection Abatement Procedures and Requirements, sets forth the procedures and requirements for the application and award of planning or design grants from the Interconnection/Cross-Connection Abatement Account (a component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund). The subchapter includes sections with address project prioritization, initial and second-round grant funding, application procedures and the evaluation of applications.

The Department is proposing to amend N.J.A.C. 7:22A-7.6 to recognize that the original intent of the limitations placed on combining various Federal and State funding mechanisms to finance a particular project or scope of work was to prohibit a project sponsor's receiving a double benefit (that is, receiving funding through two financing programs for the same cost). This provision now clearly allows funding for the same scope of work, but prohibits the funding of the same work within that scope.

N.J.A.C. 7:22A-7.7(a) is proposed to be changed to correct a typographical error in "Department."

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The Department is proposing to amend N.J.A.C. 7:22A-7.9(b) to delete the term "bypass" and replace it with the term "defer" to maintain consistency within the chapter. The Department will continue to work with project sponsors in order to complete projects' applications.

Amendments to N.J.A.C. 7:22A-7.15 are proposed to modify the threshold at which a value engineering study would be required. See the discussion above regarding the similar proposed amendments to N.J.A.C. 7:22A-6.15.

Social Impact

The proposed readoption with amendments will have a beneficial social impact. The sanitary/stormwater mapping requirements and combined sewer overflow planning activities will give the municipalities and local units a technical database with which to subsequently implement pollution abatement measures within their boundaries. The grants available to local government units under these rules will continue to be beneficial to the citizens of New Jersey, as well as the seasonal visitors to the State through improvements to the health, safety, aesthetic value and recreational attributes of the surface, including coastal, waters of the State.

Economic Impact

The proposed readoption with amendments of N.J.A.C. 7:22A, which sets forth the requirements for municipalities and local units to receive grants for certain pollution control measures, will enable them to improve their stormwater sewer systems or combined sewer systems. Applicants are eligible for a grant to cover up to 90 percent of the planning or design costs related to these pollution control activities. The grant recipients will be responsbile for at least 10 percent of the project costs. These rule amendments propose the use of funds from the 1989 bond act as a supplemental source of funds to continue the progress of activities initiated under the Sewage Infrastructure Improvement Act. The moneys initially allocated for the mapping and monitoring requirements of the Act are not sufficient to fully cover the costs associated with that work. However, these moneys, available either through the Sewage Infrastructure Improvement Act or the 1989 bond act, provide a positive economic impact to begin the required activities which will aid in the process of upgrading estuarine and coastal water quality. By maintaining the unique recreational and aesthetic value that a clean surface water and coastal environment creates, real estate and tourism income will not be adversely affected.

Environmental Impact

The proposed readoption with amendments will have a positive environmental impact by continuing requirements related to coastal mapping/monitoring as well as maintaining the availability of a funding program to provide the affected municipalities and local units with money for the remediation of stormwater and combined sewer system pollution sources. Untreated sewage and nonpoint source pollution are discharged from these systems during and after storm events. The surface waters of the State are, in turn, subject to elevated levels of bacteria, nutrients, toxics, oil and grease, and other pollutants. Controlling these pollution sources by eliminating point and nonpoint sources of pollution will result in water quality improvements. The improvement in water quality will benefit the environment through improvements in the health and preservation of the aquatic ecosystem. This will preserve the natural value of the State's water resources and in particular, the coastal resources such as shellfish, finfish and other aquatic life.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed readoption with amendments will not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules establish mapping/monitoring requirements for affected municipalities and set forth procedures by which the Department can provide funds for required activities and for improvements to combined sewer systems. Therefore, no regulatory flexibility analysis is required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:22A.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:22A-1.2 Scope

(a)-(e) (No change.)

(f) This chapter also governs the Department's disbursement of funds from the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181) for the performance of activities required by the Sewage Infrastructure Improvement Act.

7:22A-1.4 Definitions

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

...

"Combined Sewer Overflow Account" means the component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund **or the Stormwater Management and Combined Sewer Overflow Abatement Fund,** as determined by the Department, which will be used to provide grants to local government units for the planning and design of combined sewer overflow abatement facilities.

...

"Department" means the New Jersey Department of Environmental Protection [and Energy] and its successors and assigns.

...

"Fund" means the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund established by **the Sewage Infrastructure Improvement Act,** N.J.S.A. 58:25-23 et seq., **or the Stormwater Management and Combined Sewer Overflow Abatement Fund established by the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 (P.L. 1989, c.181).**

...

"Interconnection/Cross-Connection Abatement Account" means the component of the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund **or the Stormwater Management and Combined Sewer Overflow Abatement Fund,** as determined by the Department, which will be used to provide grants to affected municipalities for the planning or design of interconnection/cross-connection abatement facilities.

...

7:22A-1.5 Fund procedures

(a) The moneys appropriated pursuant to the **Sewage Infrastructure Improvement** Act and any interest earned thereon shall be deposited in a separate interest bearing account known as the Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund. **The moneys available pursuant to the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 shall be deposited in a separate interest bearing account known as the Stormwater Management and Combined Sewer Overflow Abatement Fund.**

(b) (No change.)

(c) Prior to awarding any grant money from the **Municipal Stormwater Management and Combined Sewer Overflow Abatement Assistance Fund pursuant to the Sewage Infrastructure Improvement Act,** the Department shall, in writing, notify the presiding officers of both houses of the State Legislature of the applications received, the grant recipients, the amounts requested, the amounts to be awarded and the purposes for which the grants shall be used.

(d) The Department shall not award any grant money from the Stormwater Management and Combined Sewer Overflow Abatement Fund pursuant to the Stormwater Management and Combined Sewer Overflow Abatement Bond Act of 1989 unless the expenditure is authorized pursuant to an appropriations act.

SUBCHAPTER 2. GRANT AGREEMENT PROCEDURES AND REQUIREMENTS

7:22A-2.4 Grant conditions

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

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(d) Recipients shall include the following statement in each subagreement awarded pursuant to this chapter:

"This contract or subcontract is or may be funded in part with funds from the New Jersey Department of Environmental Protection [and Energy]. Neither the State of New Jersey nor any of its departments, agencies, or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the requirements contained in N.J.A.C. 7:22A."

(e) (No change.)

SUBCHAPTER 4. FINAL MAPPING AND MONITORING REQUIREMENTS

7:22A-4.2 Reporting requirements

(a)-(e) (No change.)

(f) [At any time prior to, but no later than one month after, the adoption of the final map in (a) above, all] **All** affected municipalities shall submit a priority list for quarterly monitoring in accordance with N.J.A.C. 7:22A-4.8(b) to the Department **with the final map or within 60 days of the adoption of these rules, whichever is later.**

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

7:22A-4.3 Final mapping

(a)-(i) (No change.)

(j) The affected municipality shall include on the final map the following features associated with their stormwater sewer system:

1. (No change.)

2. The location of stormwater outfalls, including the surface water classification, as set forth in the Surface Water Quality Standards, N.J.A.C. [7:9-4] **7:9B**, of the receiving water body at each outfall;

3.-10. (No change.)

(k)-(q) (No change.)

7:22A-4.4 Investigative priority listing

(a) All affected municipalities shall submit a priority list for the Department's approval which identifies the order in which the stormwater sewer systems will be investigated. The priority list shall include for each stormwater outfall the surface water classification, established in the Surface Water Quality Standards, N.J.A.C. [7:9-4] **7:9B**, for the waterbody into which the outfall discharges. The priority list shall include the stormwater outfall number established in N.J.A.C. 7:22A-3.10(a) and shall be based on the following priorities, unless the affected municipality demonstrates to the satisfaction of the Department that other priorities should be used due to site-specific conditions:

1.-9. (No change.)

(b) (No change.)

7:22A-4.5 Identification of interconnections and cross-connections

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

(d) The affected municipality shall**, unless otherwise directed by the Department,** isolate and identify the source of the contamination as follows:

1.-2. (No change.)

(e) (No change.)

7:22A-4.7 Excessive bacterial levels for sample analysis

(a) Based on the surface water classification of the receiving water body as set forth in the Surface Water Quality Standards, N.J.A.C. [7:9-4] **7:9B**, bacteria levels shall be considered excessive for the purposes of this subchapter where grab sample analysis indicates:

1.-3. (No change.)

7:22A-4.8 [Quarterly] **Periodic** monitoring

(a) All affected municipalities shall initiate the quarterly monitoring of their stormwater outfall lines in the first month following the [submittal] **approval** of the final map. The affected municipality shall, on a quarterly basis, take a grab sample at all stormwater outfalls for any stormwater sewer system discharging into salt water in accordance with N.J.A.C. 7:22A-4.6(d)1.

(b)-(h) (No change.)

7:22A-4.15 Allowable costs

(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant agreement. The quarterly monitoring requirements under N.J.A.C. 7:22A-4.8 will not be an allowable cost under the final mapping grant award. Allowable project costs may include:

1.-2. (No change.)

(b) (No change.)

SUBCHAPTER 6. COMBINED SEWER OVERFLOW ACCOUNT PROCEDURES AND REQUIREMENTS

7:22A-6.4 Criteria for project priority

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

[(c) Only those local government units committing to the project document submittal or application deadlines shall have their project considered for financial assistance in the forthcoming funding cycle.]

7:22A-6.5 State and Federal funding

Local government units which receive grants from the Combined Sewer Overflow Account shall be ineligible to receive financial assistance for the same [scope of] work (planning or design) [for] **within the scope of** the project in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6. Further, those local government units which receive financial assistance in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6 shall be ineligible to receive grant moneys for the same [scope of] work (planning or design) [for] **within the scope of** the project pursuant to this subchapter.

7:22A-6.6 Project [bypassing] **funding**

(a) The Department shall consider a local government unit's failure to submit the complete application within the time period specified as a decision to not pursue a grant for the project during the applicable funding cycle. [Project applications which do not substantially comply with the requirements of N.J.A.C. 7:22A-6.8 shall be bypassed.]

(b) [Written notice of a bypass action shall be forwarded to the local government unit. As a result of such action, the project on the Project Priority List shall become ineligible to receive Combined Sewer Overflow Fund moneys in the applicable funding cycle. This action may allow the next highest ranked project to fall within the fundable range on the Project Priority List. A bypassed project shall remain on the Project Priority List for consideration of financial assistance in future funding cycles.] **Grant applications will be prioritized by the Department based on the criteria set forth in the Priority System pursuant to N.J.A.C. 7:22A-6.4. The award of grant funds from the Combined Sewer Overflow Abatement Account will be based on the application's priority relative to other applications certified for funding by the Department pursuant to N.J.A.C. 7:22A-6.9 and on the amount of available funds.**

7:22A-6.8 Application procedures

(a)-(e) (No change.)

(f) Submissions which do not substantially comply with this subchapter shall not be processed further [and will be bypassed] **and the applicant will be so notified.**

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

7:22A-6.9 Evaluation of application

(a) (No change.)

(b) Upon the completion of a full review and evaluation of each application, the Department shall either certify the project for funding or [bypass the project for funding in the funding cycle for which the application was submitted] **defer the project application.**

[(c) The Department shall promptly notify an applicant by certified mail if its project has been bypassed. As a result of a project

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bypass action, the next highest ranked project on the Project Priority List may fall within the fundable range.]

7:22A-6.15 Value engineering

(a) Recipients of Combined Sewer Overflow Account design grants shall conduct value engineering for the project if the total estimated building cost exceeds $10 million **or such amount as established in the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. and any amendatory or supplementary acts thereto, whichever is greater**.

(b) (No change.)

SUBCHAPTER 7. INTERCONNECTION/CROSS-CONNECTION ABATEMENT ACCOUNT PROCEDURES AND REQUIREMENTS

7:22A-7.6 State and Federal funding

Affected municipalities which receive second-round grants from the Interconnection/Cross-connection Abatement Account shall be ineligible to receive financial assistance for the same [scope of] work (planning or design) [for] **within the scope of** the project in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a New Jersey Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6. Further, those affected municipalities which receive financial assistance in the form of a Federal grant, State Matching Funds pursuant to N.J.A.C. 7:22-2, a New Jersey Wastewater Treatment Fund or New Jersey Wastewater Treatment Trust loan pursuant to N.J.A.C. 7:22-3 and 4, or a Pinelands Infrastructure Trust grant or loan pursuant to N.J.A.C. 7:22-6 shall be ineligible to receive second-round grant moneys for the same [scope of] work (planning or design) [for] **within the scope of** the project pursuant to this subchapter. Notwithstanding the provisions of N.J.A.C. 7:22-3, 4 and 5, projects which do not receive a second-round grant pursuant to this subchapter will be eligible to receive a planning and design allowance pursuant to N.J.A.C. 7:22-5 or 7:22-7, less the amount of their initial planning grant.

7:22A-7.7 Pre-application procedures

(a) Affected municipalities are urged to be familiar with the requirements of this subchapter and to contact the Department[t] prior to the initiation of the planning process so that their projects are in a position to proceed in a timely manner.

(b) (No change.)

7:22A-7.9 Evaluation of application

(a) (No change.)

(b) Upon the completion of a full review and evaluation of each application, the Department will either certify the project for funding or [bypass] **defer** the project application and notify the applicant of such action. As a result of a project [bypass] **deferral** action, the next highest ranked project may fall within the fundable range.

7:22A-7.15 Value engineering

(a) The recipient shall conduct value engineering for the project if the total estimated building cost exceeds $10 million **or such amount as established in the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. and any amendatory or supplementary acts thereto, whichever is greater**.

(b) (No change.)

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Application and Annual Registration Renewal Fees for Ionizing-Radiation-Producing Machines

Proposed Repeal and New Rule: N.J.A.C. 7:28-3.12

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq. and N.J.S.A. 26:2D-1 et seq.

DEP Docket Number: 42-94-08/430.

Proposal Number: PRN 1944-517.

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

Wednesday, October 12, 1994 at 10:00 A.M.
Radiation Protection Programs Office
Large Conference Room
729 Alexander Road
Princeton, NJ 08540

Submit written comments, identified by the DEP Docket Number given above, by October 19, 1994 to:

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

The agency proposal follows:

Summary

The Department of Environmental Protection (the "Department") is proposing to revise the fees in N.J.A.C. 7:28-3.12 for the initial application and annual renewal of the registration of ionizing-radiation-producing machines. The Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. (the "Act"), enacted in 1958, established New Jersey's Radiological Health Program and authorizes the Department to charge fees for the services it performs. The Act further provides that the fees charged shall be based on criteria contained in a fee schedule adopted by the Department as a rule or regulation in accordance with the Administrative Procedures Act. The fees must reflect the actual or projected expenses incurred by the Department in the performance of the service for which the fee is being charged. As explained below, under this proposed fee rule, some registrants will pay higher annual registration fees, but the majority of registrants (over 53 percent) will pay lower annual registration fees.

The Act also created the Commission on Radiation Protection (the "Commission") and vested in that body the authority to promulgate rules and regulations necessary to prohibit and prevent unnecessary radiation exposure to humans. Since 1970, when the Department was created, the Department has carried out various programs to prohibit and prevent unnecessary exposure to radiation. One of the key radiation exposure prevention programs, implemented by the Bureau of Radiological Health (BRH) within the Department, is the Machine Source Registration and Inspection Program.

The most common and largest source of radiation exposure to the general public, after naturally occurring background radiation, is from medical and dental procedures involving ionizing-radiation-producing machines according to the National Council on Radiation Protection and Measurements (NCRP) Report No. 93 (1987). NCRP Report No. 100 (1989) states that, in 1980, there were 1,230 radiographic procedures performed per 1,000 population in the United States. Exposure to ionizing-radiation can increase risks of developing cancer. Extrapolating the estimates for total yearly national exposure from NCRP Report No. 100 to New Jersey's population, the BRH estimates that each year in New Jersey 147 fatal cancers and 59 non-fatal cancers can be attributed to radiation from medical procedures using X-rays. Although the benefits of the use of X-rays usually outweigh the potential detriment, the risks from radiation exposure are significant. It is important to assure that the radiation doses to New Jersey residents are as low as reasonably achievable without compromising the quality of health care. It is thus particularly important to inspect X-ray regularly and to ensure that any violations are corrected expeditiously.

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The Machine Source Registration and Inspection Program helps to ensure that neither patients, medical personnel nor the public will receive unnecessary radiation exposure from defective or improperly maintained machines. The overall process of implementing the registration and inspection program, as described below, involves developing appropriate standards, proposing and adopting regulations which incorporate those standards, registering the ionizing-radiation-producing machines, inspecting the machines for compliance and requiring the correction of any violation observed.

The Department and the Commission work with Federal agencies as well as national organizations to evaluate and develop appropriate standards and measures to prevent unnecessary ionizing-radiation exposure to the public. Several Department staff are members of the Conference of Radiation Control Program Directors (CRCPD), a national organization that develops and supports consistent radiation protection standards. The Department also provides comments and advice to the United States Food and Drug Administration (FDA) on regulations dealing with machine source issues. Once standards are established, the Commission proposes and adopts them into the rules at N.J.A.C. 7:28.

Ionizing-radiation-producing machines must be registered with the Department. See N.J.A.C. 7:28-3.3. Upon receipt of an assembler's report, which is required by the U.S. Food and Drug Administration (FDA) regulations (21 CFR Part 1020.32 (d)(1)), the BRH sends the registrant a registration form for completion. Upon receipt of the completed registration form, the BRH enters the information into the BRH's computer database, verifies the information, completes the facility file folder, and sends a approved copy to the registrant. The Department sends initial application fee invoices to registrants of newly registered machines.

Once ionizing-radiation-producing machines have been registered with the BRH, an inspection frequency is assigned. The BRH schedules most inspections of ionizing-radiation-producing machines in advance. The BRH support staff make appointments for inspections with the facility. The BRH has attained significant efficiencies over the last several years with a state-of-the-art computer system that, utilizing a zip code sort feature, ensures that inspectors work within one general area each day. This keeps travel time to a minimum and increases inspectors' productivity. Inspectors usually perform inspections four days a week. They spend one day per week in the office handling the inspection administrative activities. The inspectors report any violations found and forward them to the Bureau of Enforcement Services (BES) in the Department, which processes and issues enforcement documents.

The Act authorizes the Department to assess and collect fees, and directs the Department to charge fees that reflect the actual or projected expenses incurred by the Department in the performance of the services for which the fee is charged. See N.J.S.A. 26:2D-9(l). The Department recognizes that the actual expenses associated with the inspection of separate types of ionizing-radiation-producing machines vary in some ways and remain constant in other ways. Accordingly, the BRH has developed the new fee schedule proposed herein using the following cost-related criteria and inspection variables:

1. Fixed costs (those budget expenses occurring independent of the inspections, for example, overhead, furniture);
2. Inspection cycle or frequency (different categories of ionizing-radiation-producing machines have different inspection cycles: one, two, three, or five years);
3. Inspection duration (the amount of time needed for each inspection differs for different categories of machines); and
4. Other variable costs (those budget expenses directly associated with inspections).

One of the preparatory steps in the process of calculating the appropriate fee for each type of machine is the determination of the inspection cycle or frequency for each type of machine. The Conference on Radiation Control Program Directors (CRCPD) published a report entitled "Criteria for Adequate Radiation Control Programs (X-ray)" in April 1981 that contains recommendations regarding what should be included in a radiation control program to adequately protect the public and radiation workers from unnecessary radiation. The report recommends that a program have a written priority schedule which sets routine inspection frequencies by type of X-ray installation. It also recommends an inspection cycle of no more than five years for any type of X-ray machine. Machines with higher priorities should be inspected more frequently.

In 1985, the BRH set basic priorities for inspections. In 1994, the BRH revised the priority of mammography machines to reflect the Federal Mammography Quality Standards Act (MQSA), 42 U.S.C.A. §263b. The BRH also revised the inspection frequency for therapeutic machines with peak kilovoltage (kVp) greater than 60 kVp to an annual inspection. The revised inspection priorities are as follows:

Hospital facilities—one year.
Medical, industrial, school, government facilities—two years.
Dental facilities—three years.
Veterinary facilities—five years.
All mammography machines—one year.
All medical therapeutic machines with peak kilovoltage greater than 60 kVp—one year.

The inspection priorities are based on the following considerations. According to the NCRP Report No. 100 (1989), in a 1980 study, a total of 1230 radiologic examinations per thousand population were performed. Since 1980, medical application of ionizing radiation has increased. Medical radiographs (all types) constitute 790 examinations per thousand population or 63 percent of the total exposures. Additionally, most medical radiographs result in radiation exposure to a vital organ. Dental radiographs constitute 440 examinations per thousand population or 37 percent of the total exposures. Dental radiography exams use small-diameter radiation fields, which help to reduce exposure to vital organs, although the thyroid, lens of the eye, and trunk of the body may receive some scatter radiation from the irradiated area and x-ray tube head. The BRH considers medical exposure to be of a higher priority than dental exposure.

NCRP Report No. 100 (1989) states that radiographic exams in hospitals constitute 78 percent of the population's exposure to radiation. Since most of the population receives medical radiation exposures in a hospital setting, the BRH considers hospitals its highest priority and has established a one-year inspection cycle for them. The report also states that radiographic exams in medical offices constitute the remaining 22 percent of the population's exposure to radiation. BRH has assigned medical facilities a two-year inspection cycle. Dental offices are the third priority and have been assigned a three-year inspection cycle.

The Federal Mammography Quality Standards Act (MQSA), 42 U.S.C.A. §263b, was enacted in October of 1992. This law requires Federal regulation of all mammography facilities. The U.S. Department of Health and Human Services' Food and Drug Administration (FDA) implements the law. In December 1993, the FDA published final interim regulations implementing the MQSA in the Federal Register. The MQSA requires that by October 1, 1994 all mammography facilities must be accredited by an approved accrediting agency and certified by the FDA. The FDA currently plans to contract with the states to perform the mammography facility inspections. The MQSA requires that the inspectors who are performing the MQSA inspections be certified by the FDA. The MQSA requires that all mammography machines be inspected annually; thus, the BRH has established a one-year inspection cycle for such facilities.

The BRH has also placed medical therapeutic machines with peak kilovoltage of over 60 kVp on a one-year inspection cycle. Medical therapeutic machines are used for the treatment of patients with cancer. It is critical that these machines perform properly so that the prescribed radiation dose reaches the patient's tumor. It is also essential that alignment aids on such units are working properly so that only the tumor is irradiated and not normal tissue.

Some schools and government agencies (for example, police stations, court houses, airports) have medical, dental or non-medical ionizing-radiation-producing machines. Because a large number of the general public may be exposed to radiation in school and government facilities, especially from baggage and other security x-ray machines, the BRH considers these facilities a higher priority than dental X-ray facilities and has assigned these facilities a two-year inspection cycle.

A few industrial facilities have medical X-ray machines and some industrial facilities have non-medical X-ray machines (for example, analytical ionizing-radiation-producing machines). The radiation levels produced by most industrial machines are low, but in the BRH's experience, these facilities are often not as aware of radiation safety as are medical facilities. Also, analytical ionizing-radiation-producing machines generate continuous and pinpoint beams, which have the potential to cause serious radiation injuries. Particle accelerators are in this category and many produce very high levels of radiation. Therefore, BRH has likewise set a two-year inspection cycle for these facilities.

Ionizing-radiation-producing machines at veterinary facilities produce direct radiation exposure to animals. Veterinarians and animal handlers are exposed to scatter radiation. Currently, the Department's regulation

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of veterinary offices is limited to basic radiation safety. BRH inspects veterinary machines on a five-year cycle. This schedule is in keeping with the CRCPD's recommendations to inspect X-ray machines at least once in five years. The Department and the Commission are considering proposing new rules for veterinary facilities, under which the inspection frequency might be changed.

The BRH analyzed the average amount of time required to inspect an individual unit in each machine category, based on the BRH's records of inspections over the past years. A summary of the analysis appears in Table 1 below.

Table 1
Analysis of Inspection Times for X-ray Machine Types
ALL TIMES ARE PER TUBE, IN MINUTES

Machine Type	Initial Interview[1]	Set-up[2]	Machine Parameters[3]	Review Paperwork[4]	Break-down[5]	Exit Interview[6]	TOTAL
Dental	5	5	26	2	2	5	45
Radiographic	5	5	71	2	2	5	90
Portable Radiographic	5	5	26	2	2	5	45
Fluoroscopic	5	5	41	2	2	5	60
Portable Fluoroscopic	5	5	26	2	2	5	45
Motor Vehicle Mounted	5	5	41	2	2	5	60
Radiographic & Fluoroscopic	5	5	101	2	2	5	120
Computed Tomography	5	0	20	30	0	5	60
Mammography[7]	5	5	70(90)	60(313)	2	8	160(420)
Therapy (≤ 60 kVp)	5	0	15	35	0	5	60
Therapy (61 kVp to 999 kVp)	5	0	40	70	0	5	120
Therapy (1 MeV and above)	5	0	40	130	0	5	180
Industrial Radiography	15	1	43	40	1	5	105
Electron Beam Welders/Furnaces	15	1	15	38	1	5	75
Analytical (≤ 16 kVp)	15	1	22	16	1	5	60
Analytical (≥ 16 kVp)	15	1	22	16	1	5	60
Electron Microscopes	15	1	15	8	1	5	45
Cabinet	15	1	15	8	1	5	45
Baggage	15	1	15	8	1	5	45
Non-medical Particle Accelerators (≤ 30 kVp)	15	1	35	78	1	5	135
Non-medical Particle Accelerators (≥ 30 kVp)	15	1	40	88	1	5	150
Bone Densitometer	5	1	14	4	1	5	30
Radiation Therapy Simulator	5	1	20	28	1	5	90
Other units (≤ 50 kVp)	15	1	22	16	1	5	60
Other units (≥ 50 kVp)	15	1	30	38	1	5	90

[1]**Initial Interview** includes, but is not limited to, getting permission form signed; completing X-ray operator form; explaining inspection procedures; and verifying X-ray machines (example: checking model and serial numbers).

[2]**set-up** includes, but is not limited to, attaching cables and probes; checking operation; warm up; and entering facility/tube information into computer.

[3]**Machine Parameter Testing** includes, but is not limited to, testing all parameters as required by specific NJAC 7:28 subchapter for type of ionizing radiation producing machines being inspected (examples: kVp, timer, radiation exposure, light fields).

[4]**Review Paperwork** includes, but is not limited to, checking all "paperwork" procedures as required by specific NJAC 7:28 subchapter for type of ionizing radiation-producing machines being inspected (examples: quality assurance program requirements, tests that facility must perform, documentation of operator training, checking personnel monitoring reports).

[5]**Equipment Break-down** includes, but is not limited to, taking apart and packing it up for travel.

[6]**Exit Interview** includes, but is not limited to, having facility representative sign inspection forms; explaining any apparent violations; recommending service for machine parameters that are marginally compliant; answering questions about inspection; making recommendations for improved radiation protection; and discussing new or pending changes in regulations.

[7]Time shown in parentheses is estimated time to perform a mammography inspection under the Mammography Quality Standards Act (MQSA) requirements.

Having determined the inspection cycle and the inspection duration for each machine type and having obtained the number of X-ray tubes to be inspected in each category from the BRH computer, the BRH calculated the number of full-time inspectors needed to perform inspection activities. The BRH first calculated the number of hours each inspector would have available to perform inspections each year by subtracting the number of hours that an employee would not be available for inspections (holidays, office days, vacation: a total of 1,030 hours/year) from the total working hours of a full time employee (2,080 hours/year) to yield 1,050 hours/year. Based on the inspection durations (Table 1), the inspection cycles for each category and the number of machines to be inspected annually, 12,862 hours will be required annually to perform inspections. This total number of hours required annually to perform inspections divided by the number of hours which an individual inspector spends annually performing such inspections yields the number of inspectors needed, that is, 12,862 divided by 1,050 equals 12.2 inspectors. The calculation includes the estimated number of hours needed to complete the Federally mandated inspection of mammography.

Based on the personnel analysis above, and drawing from previous budgets, the Department assessed the total cost of, and subsequently developed a total budget for, the registration and inspection program. This budget is summarized in Table 2.

In FY95, the BRH expects to receive approximately $100,000 from the FDA for mammography inspections performed by BRH investigators under contract with the FDA. This should increase to approximately $200,000 in FY96 when the program is implemented for a full year. In Table 2, this anticipated revenue has been credited to the total BRH budget, thus reducing the amount of money needed to be collected in fees.

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TABLE 2
ESTIMATED FY95 BUDGET FOR MACHINE SOURCE REGISTRATION AND INSPECTION PROGRAM

ITEM DESCRIPTION	ESTIMATED COSTS
Salaries (23.2 positions)	$1,071,404
Assistant Director's Office	$ 43,143
Fringe Benefits (32.35%)	$ 360,556
Indirect Costs (32.65%)	$ 481,621
FY95 "merit" (5%)[1]	$ 58,700
SUBTOTAL SALARIES	$2,015,424[2]
Printing/Copying	$ 25,000
Vehicle Fuel/Oil	$ 10,000
Security	$ 5,000
Other Materials and Supplies	$ 5,000
SUBTOTAL	$ 45,000
Travel	$ 7,000
Telephone	$ 23,000
Postage	$ 15,000
Information Processing, External	$ 50,000[3]
Professional Services	$ 10,000
Other Services (including Training)	$ 50,000
Information Processing, Internal	$ 30,000
SUBTOTAL	$ 185,000
Equipment Maintenance	$ 50,000
Vehicle Maintenance	$ 10,000
Central Motor Pool	$ 20,000
SUBTOTAL	$ 80,000
Vehicular Replacements	$ 26,000[4]
Scientific	$ 35,000[5]
Computer	$ 15,000
SUBTOTAL	$ 76,000
OPERATING SUBTOTAL	$ 386,000
CONTRIBUTORY ASSESSMENTS AND DIRECT CHARGES:	
Director's Office	$ 100,000
Laboratory Assessment	$ 20,000
Communications Center	$ 8,000
Quality Assurance	$ 34,000
Science and Research	$ 30,000
Attorneys' Fees	$ 100,000
Bureau of Revenue	$ 15,000
ASSESSMENTS AND CHARGES SUBTOTAL	$ 307,000
TOTAL BRH ESTIMATED BUDGET	$2,708,424
Revenue anticipated from FDA for Mammography	($ 197,934)
Total BRH estimated budget (fee-supported)	$2,512,490

[1]Expected performance increases.
[2]See Table 3 for detail.
[3]Includes all computer maintenance contracts.
[4]Three cars per year.
[5]New scientific equipment purchases over 5-year period.

TABLE 3
PERSONNEL COSTS FOR MACHINE SOURCE REGISTRATION AND INSPECTION PROGRAM

PERSONNEL	POSITIONS	SALARIES
MANAGERIAL PERSONNEL		
Bureau Chief	0.6	
Radiation Physicist I	2.0	
Radiation Physicist II	1.0	
Technician MIS	0.6	
	4.2	$ 235,998
INSPECTION PERSONNEL		
Radiation Physicist I	1.0	
Radiation Physicist II	3.0	
Radiation Physicist III	6.0	
	10.0	$ 478,691
MAMMOGRAPHY INSPECTION PERSONNEL		
Radiation Physicist I	1.0	
Radiation Physicist III	1.0	
	2.0	$ 112,173
CLERICAL/ADMINISTRATIVE SUPPORT PERSONNEL		
Principal Environmental Specialist	1.0	
Research Scientist II	1.0	
Principal Clerk Typist	3.0	
Audit Account Clerk	1.0	
Technician	1.0	
	7.0	$ 244,542
Assistant Director's Office	1.0	$ 43,143
SUBTOTAL		$1,114,547
Fringe Benefits (32.35%)		$ 360,556
Indirect Costs (32.65%)		$ 481,621
FY95 "merit" (5%)		$ 58,700
TOTAL PERSONNEL COSTS		$2,015,424

Fringe benefits are calculated as a percentage of the average salary. The percentage (32.35 percent) is set by the Department of Treasury, and is based on costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave and the employer's share of FICA. Indirect costs are calculated as a percentage of the total salary and fringe dollars for that salary, combined. Indirect costs (32.65 percent) consist of Department management salaries and operating expenses, and related expenses (personnel, fiscal and general support staff), building rent and the Department allocation of indirect costs listed in the Statewide Allocation Plan prepared annually by the Department of Treasury.

It should be noted that through efficiencies achieved over the past several years, and notwithstanding the development of new programs (for example, MQSA), the size of the Machine Source Registration and Inspection Program has been reduced from 24 positions to the proposed 23.2 full-time positions.

To allow the BRH to calculate fees which reflect machine inspection costs, the BRH next divided the projected total FY95 budget into two general categories, fixed budget and variable budget. The components are itemized in Table 4 below. Table 4 does not include MQSA implementation costs.

TABLE 4
VARIABLE AND FIXED BUDGETS

VARIABLE BUDGET			
Inspectors' salaries, fringe benefits, indirect costs (10 inspectors)		$840,400	
Variable budget line items:			
Vehicle Gas/Oil	$10,000		
Equipment Maintenance	50,000		
Vehicular Maintenance	10,000		
Central Motor Pool	20,000		
Vehicular Replacement	26,000		
Scientific	35,000		
Communications Center	8,000		
Subtotal		$159,000	
Total Variable Budget			$ 999,400
FIXED BUDGET			
Management and Administrative Salaries		$978,090	
Other Fixed operating budget		$534,000	
Total Fixed Budget			$1,512,090
Total FY95 Budget			$2,511,490

The fixed budget itemized in Table 4 is that portion of the budget which includes administration, data processing, printing, postage, telephone, building costs, and maintenance costs. The fixed budget is required for the basic operation of the BRH to maintain registrations of almost 9,000 facilities and over 20,000 ionizing-radiation-producing machines. As noted below in the discussion of the Annual Registration Renewal Fee Calculation Methodology, the costs arising from this fixed portion of the budget were divided equally among all ionizing-radiation-producing machines for which registration is required. The variable portion of the budget itemized in Table 4 is that portion of the budget

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which relates directly to the inspection portion of the Machine Source Registration and Inspection Program. It includes the field inspectors' salaries, and the expenses for scientific and vehicular maintenance and replacement. As noted below in the discussion of the Annual Registration Renewal Fee Calculation Methodology, the costs arising from this variable portion of the budget were divided among the separate categories of ionizing-radiation-producing machines based on the inspection frequency for each category and the average amount of time required to complete an inspection of a unit in each category.

All ionizing-radiation-producing machines must be registered with the BRH. The initial registration of machines provides the database for the ionizing-radiation-producing machine inspection program. The BRH analyzed the cost of processing an initial application to register ionizing-radiation-producing machines and has proposed that a $40.00 application fee be charged for the initial registration of each ionizing-radiation-producing machine. The costs recouped by the application fee are those for clerical and administrative processing, $16.50; supervisory and technical survey review, $17.00; and data processing and miscellaneous costs, $6.50. This is a substantial reduction from the current $100.00 application fee. A registrant of a newly registered machine will be charged the $40.00 application fee plus a prorated registration fee for the remainder of the first year billing cycle.

Annual Registration Renewal Fee Calculation Methodology

The BRH determined both the fixed and variable costs of inspection and annual registration renewals in order to calculate appropriate fees for the registration and inspection program. In calculating the fixed portion of the annual registration renewal cost per X-ray tube, the BRH determined the total fixed budget ($1,512,000 from Table 4) and divided this number by the total number of X-ray tubes (20,800) currently registered with the BRH. This resulted in a fixed cost per tube per year of $72.70.

In calculating the variable portion of the annual registration renewal and inspection cost per X-ray tube, the BRH first calculated the total number of hours required to inspect X-ray tubes in each machine category by multiplying the total number of X-ray tubes in the category by the average time needed to inspect an X-ray tube in that category, multiplying that result by the inspection frequency for that category. (Note: For an inspection frequency of one year, the multiplier is 1; for an inspection frequency of two years, the multiplier is 0.5; for an inspection frequency of three years, the multiplier is 0.3; and for an inspection frequency of five years, the multiplier is 0.2). Second, the BRH calculated the portion of the total variable budget ($999,400 from Table 4) allocatable to each machine category by dividing the total number of inspection hours per year for each machine category by the total number of inspection hours per year for all categories combined, and then multiplying the resulting percentage by the total variable budget. Third, the individual variable fee per X-ray tube was calculated by dividing the above calculated variable budget allocatable to each category by the total number of X-ray tubes in that category.

To determine the individual fees for ionizing-radiation-producing machines, the BRH added the fixed portion of the fee per X-ray tube to the variable portion of the fee per X-ray tube for each machine category and arrived at the total fee. A copy of the Department's calculations of the registration renewal fees is available for inspection by the public at the Bureau of Radiological Health, 729 Alexander Road, Princeton, New Jersey (609-987-2014). The Department requests that the interested person telephone to make an appointment to review the document.

This approach for calculating fees enabled the BRH to develop a revised fee schedule which includes substantially more categories of machines than are listed in the current rule. The new schedule more accurately and fairly allocates program costs to the various components of the regulated community.

The specific provisions of the proposed new rule are as follows:

N.J.A.C. 7:28-3.12(a) requires that the registrant pay the application fee of $40.00 on initial registration of each X-ray tube. It also requires that the registrant pay the prorated portion of the applicable registration renewal fee for the remainder of the first year of registration.

N.J.A.C. 7:28-3.12(b) through (e) sets forth the annual registration renewal fees for all machine source categories.

N.J.A.C. 7:28-3.12(f) establishes the term of each registration as one year. This subsection also explains how the Department determines when (which month) a registration must be renewed.

N.J.A.C. 7:28-3.12(g) establishes that the registrant must pay all fees within 60 days of the date of the billing invoice issued by the Department. If the registrant fails to pay the applicable fees, the registration of the ionizing-radiation-producing machines will be considered expired. Persons possessing machines for which registration has expired shall be subject to penalties applicable to such machines. This subsection also requires that a registrant pay a $25.00 late charge if the registrant fails to pay a fee by the due date. The Department will issue a second invoice which will include the late charge.

N.J.A.C. 7:28-3.12(h) requires that each individual X-ray tube must be registered separately even if more than one X-ray tube is energized by a single generator. The registrant must pay the application and renewal fees for each individual ionizing-radiation-producing tube.

N.J.A.C. 7:28-3.12(i) states that the Department will accept only checks or money orders made payable to "Treasurer, State of New Jersey" and provide the address to which payment must be submitted.

N.J.A.C. 7:28-3.12(j) provides that an application fee will not be charged for machines already registered pursuant to the Radiation Protection Code prior to the original effective date of this subchapter (that is, November 16, 1987). The registrants of such machines must, however, pay the annual registration renewal fees for all such previously registered machines.

Social Impact

The Commission on Radiation Protection is charged with promulgating the rules necessary to prohibit and prevent unnecessary radiation exposure to humans. The Department's role is to assist in regulation development and to ensure that the rules are implemented and complied with. The proposed repeal and new rule at N.J.A.C. 7:28-3.12 will allow the Department to carry out its regulatory program to ensure that persons associated with medical, therapeutic, and industrial ionizing-radiation-producing machines are protected from unnecessary exposure to radiation.

The use of radiation for medical purposes is an indispensable part of our society. Disease and injury diagnosis and treatment by exposure to X-rays are integral parts of our health care system. The proposed new fee rule will enable the Department to recoup the actual costs to administer the registration and inspection program. An effective inspection program helps to maintain the integrity of our society's health care system.

The BRH inspection program promotes the protection of the citizens of New Jersey by testing ionizing-radiation-producing machines in a scheduled manner to maintain operational safety procedures and machine performance standards. The inspection program has the positive social impact of reducing the potential increase in cancer risks associated with unnecessary radiation exposure for both the public and the radiation workers. The goals of the BRH registration and inspection program for ionizing-radiation-producing machines are to eliminate unnecessary radiation and to reduce radiation dose levels and exposure rates for individuals to as low as reasonably achievable. The proposed new rule is designed to fairly and equitably allocate the program costs to the regulated community.

Economic Impact

The proposed new rule for ionizing-radiation-producing machine fees will increase some annual registration renewal fees and decrease others. These fees were last revised in 1990. Current financial projections indicate a short-fall of several hundred thousand dollars in the radiation fee account for the fiscal year beginning July 1, 1994 and ending June 30, 1995. The proposed fees will generate a total of $2.5 million. This is $400,000 more than is collected under the current fee rule.

The Radiation Protection Act (N.J.S.A. 26:2D-9(1)) authorizes the Department to charge annual or periodic fees which reflect the actual or projected expenses incurred by the Department in the performance of the service for which the fee is charged. The BRH has, with this proposed rule, developed fees which more accurately reflect the actual cost of the services the BRH provides. Those BRH operating costs which vary by X-ray tube will be weighted in accordance with the inspection time and inspection frequency.

The proposed fee schedule considerably expands the machine categories covered. This will result in a more fair and equitable allocation of program costs to the regulated community. When calculating the fees, the BRH rounded figures to the nearest one dollar. Therefore, the proposed fees correlate as closely as possible with the costs of the services provided by the BRH.

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The proposed fees, if adopted, are expected to have economic impacts in four sectors of the regulated community. These sectors are dental facilities, veterinary facilities, hospitals, and non-hospital facilities. Non-hospital facilities include medical doctors' offices, colleges and universities, government facilities and industrial facilities.

There are currently 12,144 dental X-ray tubes registered at 4,550 dental facilities in New Jersey. Dental facilities constitute 58 percent of the 20,800 X-ray tubes registered with the Department. Under the proposed new fee rule, the annual registration renewal fee for ionizing-radiation-producing machines at dental facilities is reduced by 5 percent from the current $100.00 per tube fee to $95.00 per tube. Since most dental offices are small businesses, the fee proposal will have a slight positive economic impact on these small businesses. If 100 percent of the dental fees are paid, the dental community will realize a net savings of more than $60,700 compared with the fees required under the current rule. The average number of X-ray tubes registered to each dental facility is three. Therefore, the average annual fee reduction per dental facility will be $15.00 under the proposed fee schedule.

The fees for most ionizing-radiation-producing machines at veterinary facilities remain unchanged under the proposed new fee rule. There currently are 409 ionizing-radiation-producing machines registered at 389 veterinary facilities. The fee for a fixed radiographic machine at a veterinary facility remains $100.00 per tube; thus the proposed new rule will have no economic impact on veterinary facilities.

The fees for ionizing-radiation-producing machines located at non-hospital facilities vary from $95.00 for bone densitometers up to $343.00 for high energy medical therapeutic units under the proposed new rule. The most common ionizing-radiation-producing machine in this category is the fixed radiographic unit, most of which are located in doctors' offices (general practitioners, chiropractors, podiatrists). The fee for these units is increased from $100.00 to $140.00. The fee increase will generate approximately $145,000 more than the current fees generate. Although most of these facilities are small businesses, the $40.00 per unit per year fee increase is not expected to have a significant negative economic impact on them.

As noted above, the non-hospital facilities category includes industrial facilities as well as colleges, universities, and government. Most of the units owned by industrial, governmental, or educational institutions will experience a slight increase in fees under the proposed new rule. For example, the registrants of X-ray baggage units will see a $6.00 increase in fees, from $100.00 to $106.00. Implementation of the proposed new fee rule is not expected to have any significant economic impact on industry, governmental facilities, or educational facilities.

The economic impact of the proposed new rules will be greatest for hospital facilities. There are 123 hospitals in New Jersey which own approximately 2,450 ionizing-radiation-producing machines. The proposed fees for this equipment range from $118.00 for bone densitometers up to $343.00 for high energy medical therapeutic machines. The fees for hospital machines are somewhat higher than fees for machines at other facilities because hospital machines are inspected annually.

Currently there are approximately 1,200 fixed and mobile medical radiographic machines owned by hospitals, accounting for nearly 50 percent of the X-ray tubes in hospital facilities. The proposed fee for these units is $208.00 which is a $108.00 increase from the current $100.00 fee. There are 61 high energy medical therapeutic machines located at hospitals. The fees for these are increased from $100.00 to $343.00.

Because the proposed new fee rule will have the greatest impact on hospitals, the Department scrutinized the potential economic impact on hospitals. The actual fees which would be charged under the proposed fee rule were calculated for 25 hospitals. The fee increase for larger hospitals was found to be approximately $3,000 per year, whereas the fee increase for smaller hospitals ranged from $1,000 to $1,500. Although these fee increases are significant, the Department analyzed the revenues generated by the radiology departments at several hospitals and found that the total revenues from the radiology departments at these larger facilities can exceed $10,000,000 per year. Although a $3,000 increase in fees is significant, it represents only a small cost in comparison to the radiology department's revenues.

The Department also considered the economic impact of not implementing the proposed fee increase. Failure to implement the proposal would substantially reduce the inspection program. The Department determined that there is a significant positive economic effect of carrying out a quality X-ray inspection program. As was indicated earlier, the health effects related to overexposure to radiation can be significant. If the Department did not pursue an aggressive inspection program of hospitals, the Department believes that hospitals' liability relating to equipment malfunctions or overexposures could increase.

The incidence of breast cancer is increasing, particularly in the northeastern part of the United States. Recent studies have attributed some of the increases in breast cancer to exposure to polluted ambient air. Accurate diagnosis of breast cancer can be ensured with aggressive quality assurance and auditing programs as mandated by the Federal Mammography Quality Standards Act (MQSA). It is particularly important from a health perspective to carry out this program in the mammography area.

The proposed fees for mammography machines will only cover the costs of inspection to determine compliance with New Jersey's standards. Any additional work mandated by MQSA will be funded by reimbursements from the Food and Drug Administration (FDA). The FDA will assess fees to mammography facilities to cover costs of implementing MQSA. In FY95 (July 1, 1994 to June 30, 1995), the Department expects to receive approximately $100,000 for mammography inspections performed by BRH under contract with the FDA. This amount should increase to approximately $200,000 in FY96. The increase from FY95 to FY96 in FDA reimbursements is appropriate since MQSA inspection by BRH personnel will not begin until November or December of 1994. Therefore, FY96 will be the first full fiscal year for the FDA mammography contract.

The amount of work, inspection and report writing time, and therefore the reimbursements which the Department may receive are estimated based on limited information available from the FDA at this time. In FY95, after FDA regulations and procedures are finalized, and when the Department is better able to analyze the financial impacts of the FDA mammography program, the Department will reassess New Jersey's proposed mammography fees and propose revisions to them if necessary.

The proposed new rules will have an indirectly positive economic impact on hospitals because national agencies such as the Joint Commission on Accreditation of Health Care Organizations (JCAHO) review state inspection reports as part of their hospital survey process. The JCAHO auditors survey hospitals for compliance with manufacturer specifications and preventive maintenance programs. They review annual equipment inspections for written documentation of problems and corrections and compliance with all other state and governmental regulations. Without the JCAHO accreditation, hospitals would experience significant negative economic impacts since most insurance companies require JCAHO accreditation to make reimbursements. In particular, hospitals would lose Medicare reimbursements if they lose their accreditation. Most companies will not establish contracts for service without proper JCAHO accreditation.

The BRH contacted the states of New York, Pennsylvania, Delaware, and Maryland to compare their fees and inspection cycles with the proposed new fees and inspection cycles for New Jersey. Since the states' machine source inspection programs vary, it is not possible to provide an exact comparison; however, some general comparisons can be made.

Presently, Delaware has no registration fees. Delaware's machine source program is funded entirely by general state appropriations. Delaware is considering a fee regulation which would cover some of its inspection expenses. Delaware's inspection cycle is every one or two years. Hospitals, doctors' offices, clinics, podiatry and veterinary facilities have a one year inspection cycle. Dental facilities and industrial facilities have a two year cycle. These are similar to New Jersey's inspection cycles.

The State of New York has a variety of inspection programs with some independent county programs. The New York State program is partially fee funded. The fees collected cover about 20 to 25 percent of the program costs. Some counties have their own programs and contract out dental inspections to health physicists. New York State maintains the database and charges a biennial $40.00 facility fee to track all ionizing-radiation-producing machines. New York State inspects machines on a one to three year cycle. All hospitals, radiologists' offices, health maintenance organizations, and clinics are inspected annually. Academic sites, general practitioners, chiropractors, and orthopedic facilities are inspected biennially. Dental, podiatry and veterinary facilities have a three year cycle. These are similar to New Jersey's inspection cycles. New York City and New York State also have developed and implemented a quality assurance program which the inspectors review and audit. They inspect only a portion of the units annually.

Pennsylvania state investigators inspect all the X-ray machines. Pennsylvania's inspection cycle is every two or four years. Hospitals and other

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facilities are inspected every two years; dental, podiatric, and veterinary facilities are inspected every four years. Pennsylvania's inspection program is 100% fee funded.

Maryland's machine source program is also 100 percent fee funded, but most inspections are done by third party vendors. Maryland investigators inspect dental and veterinary facilities. All the ionizing-radiation-producing machines are inspected on a one to three year inspection cycle. Most hospital machines are on a two year inspection cycle. However, linear accelerators are inspected annually due to the potential radiation hazard. Dental and veterinary machines are inspected every three years.

The comparison of the economic impact of the fees collected by these neighboring states is difficult, since each state has a unique history and regulatory approach. To undertake the comparison on an equalized basis, the Department compared the total amount of fees similar facilities would pay annually when located in a state charging fees and inspecting 100% of the machines. For example, a hospital with 28 X-ray machines would pay approximately $6,300 in Maryland, $5,841 in New Jersey, and $5,400 in New York City. In Pennsylvania, the same hospital would pay only $2,000, but the machines would be inspected every two years, whereas annual inspections are performed in New Jersey, New York City, and Maryland.

A typical medical office with two fixed X-ray machines would pay, annually, $585.00 in New York City, $280.00 in New Jersey, and $200.00 in Pennsylvania and Maryland (Maryland medical offices also must pay third party vendors for inspections). Dental offices with a single X-ray unit would pay, annually, $330.00 in New York City, $95.00 in New Jersey, and $75.00 in Pennsylvania. Therefore, the proposed fees for the State of New Jersey are similar to those in neighboring states.

The Department is proposing to reduce the application fee for all newly registered ionizing-radiation-producing machines from the current $100.00 to $40.00. The $40.00 fee is based on the actual cost of processing a new application and represents a 60 percent reduction in that particular fee. Registrants of newly registered ionizing-radiation-producing machines will also be charged a prorated annual registration fee for the first year of registration. The total first year fees for newly registrants machines will have a slight negative economic impact on registrations since the total first year fee will usually exceed the current first year fee.

The proposed late charge for fees not paid by 60 days after the billing date is designed to ensure that all registrants pay their fees on time. It is expected that this late charge will have a positive economic impact in that it will encourage all registrants to timely pay the appropriate fee. This will help ensure that other members of the regulated community are not forced to make up for revenue shortfalls through future fee increases.

In summary, a majority of registrants of ionizing-radiation-producing machines will experience an annual registration fee reduction under the proposed new rule. Hospitals will experience the largest annual registration renewal fee increase; however, the overall economic impact on hospitals is not expected to be significant.

Environmental Impact

The Department is committed to continuing an inspection program which will prevent unnecessary exposure to radiation. The proposed new rule sets fees which support the ionizing-radiation-producing machine inspection program in accordance with N.J.A.C. 7:28. This program regulates the possession and use of machine sources of radiation and ensures compliance with regulations designed to prohibit and prevent unnecessary radiation exposure to the public. The protection of individuals from unnecessary radiation will have a positive effect on the environment, because less radiation exposure to humans means fewer cases of cancer to workers and the general public.

Regulatory Flexibility Analysis

The proposed fee rule applies to any manufacturer, dealer, industry, hospital, State, county or local government; and any person, including, but not limited to, physician, dentist, chiropractor, podiatrist, and veterinarian having possession, custody or control of any ionizing-radiation-producing equipment. It is estimated that, of the total number of 9,035 businesses impacted by this proposal, 8,618 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The remaining 417 facilities are hospitals, industries, schools, and governmental agencies and are not considered small businesses under the Regulatory Flexibility Act.

An initial application fee of $40.00 and a prorated portion of the annual registration renewal fee are assessed for all newly registered machines for the first billing cycle. Most small businesses, as well as other businesses which register ionizing-radiation-producing machines, will therefore likely see fee increases the first registration year.

The annual registration renewal fees for the dental facilities are decreased by five dollars from $100.00 to $95.00. Most dental facilities (4,550) qualify as small businesses. Therefore, this decrease will have a slight positive economic impact for dentists.

All veterinary facilities qualify as small businesses; however, the annual registration fees for 99 percent of the machines are not changed under the proposed new rule. The fees for dental machines used at veterinary facilities are decreased from $100.00 to $86.00 per machine. The overall impact of the proposed rule will therefore be neutral for veterinarians.

It is anticipated that the other 3,680 small businesses will experience increases in their annual registration renewal fees. The registration fee for a fixed medical radiographic machine is increased 40 percent, from $100.00 to $140.00; the fee for a fixed medical fluoroscopic machine is increased 18 percent from $100.00 to $118.00 per year. The annual registration renewal fee for a medical therapy machine operating at or below one MeV is increased from $100.00 to $253.00, and the fee for a therapy machine operating above one MeV is increased from $100.00 to $343.00. Because of the high radiation doses emitted from these machines, and the potentially increased risk of radiation overexposure, these machines are inspected annually.

In developing this fee proposal, the Department balanced the need to protect patients, healthcare workers and the general public from unnecessary radiation exposure against the economic impact of the fee increases. The Department determined that failure to continue the registration and inspection programs would endanger the health and safety of the citizens of the State of New Jersey. The proposed fee rule does not impose any new recordkeeping or reporting requirements on small businesses, and it has been designed to minimize any adverse economic impact on small businesses by tailoring the fees to the costs incurred by the Department in administering the program.

Full text of the proposed repeal may be found in the New Jersey Administration Code at N.J.A.C. 7:28-3.12.

Full text of the proposed new rule follows:

7:28-3.12 Application and annual registration renewal fees for ionizing radiation-producing machines

(a) On initial registration of each x-ray tube, each registrant shall pay an application fee of $40.00 plus the prorated portion of the applicable annual registration renewal fee set forth in (b), (c), (d) or (e) below for the remainder of the first year of registration.

(b) Each registrant of an ionizing-radiation-producing machine used in a dental facility shall pay:

1. The initial application and registration fees for each x-ray tube pursuant to (a) above, and

2. In each year after the expiration of the first year of registration established pursuant to (f) below, the annual registration renewal fee per X-ray tube as follows:

DENTAL FACILITIES

Machine Category and Description	Annual Registration Renewal Fee Per X-Ray Tube
01D Dental Machine	$ 95

(c) Each registrant of an ionizing-radiation-producing machine used in a hospital facility shall pay:

1. The initial application and registration fees for each X-ray tube pursuant to (a) above, and

2. In each year after the expiration of the first year of registration established pursuant to (f) below, the annual registration renewal fee per X-ray tube follows:

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HOSPITAL FACILITIES

Machine Category and Description		Annual Registration Renewal Fee Per X-Ray Tube
01H	Dental Machine	$140.00
02H	Fixed Medical Radiographic Machine	208.00
03H	Mobile Medical Radiographic Machine	208.00
31H	Portable Medical Radiographic Machine (hand carried)	208.00
06H	Motor Vehicle Mounted Medical Radiographic Machine	208.00
04H	Fixed Medical Fluoroscopic Machine	163.00
05H	Mobile Medical Fluoroscopic Machine	163.00
32H	Portable Medical Fluoroscopic Machine (hand carried)	163.00
33H	Motor Vehicle Mounted Medical Fluoroscopic Machine	163.00
07H	Fixed Medical Radiographic Fluoroscopic Machine	253.00
08H	Mobile Medical Radiographic Fluoroscopic Machine	253.00
34H	Portable Medical Radiographic Fluoroscopic Machine (hand carried)	253.00
35H	Motor Vehicle Mounted Medical Radiographic Fluoroscopic Machine	253.00
09H	CT Scan Machine	163.00
10H	Mammography Machine	298.00
36H	Motor Vehicle Mounted Mammography Machine	298.00
37H	Mobile Mammography Machine	298.00
11H	Medical Therapeutic Machine 60 kVp	253.00
12H	Medical Therapeutic Machine 61 kVp to 999 kVp	253.00
14H	Medical Therapeutic Machine 1 MeV and above	343.00
30H	Radiation Therapy Simulator Machine	208.00
38H	Biomedical (non-human) Research Machine	140.00
21H	Electron Microscope Machine	140.00
22H	Cabinet X-ray Machine	140.00
28H	Bone Densitometer Machine	118.00

(d) Each registrant of an ionizing-radiation-producing machine used in a non-hospital facility (including, but not limited to, doctors' offices, medical facilities, industrial facilities, schools, and government facilities) shall pay:

1. The initial application and registration fees for each X-ray tube pursuant to (a) above, and

2. In each year after the expiration of the first year of registration established pursuant to (f) below, the annual registration renewal fee per X-ray tube as follows:

NON-HOSPITAL FACILITIES

Machine Category and Description		Annual Registration Renewal Fee Per X-Ray Tube
01N	Dental Machine	$106.00
02N	Fixed Medical Radiographic Machine	140.00
03N	Mobile Medical Radiographic Machine	140.00
31N	Portable Medical Radiographic Machine (hand carried)	140.00
06N	Motor Vehicle Mounted Medical Radiographic Machine	140.00
04N	Fixed Medical Fluoroscopic Machine	118.00
05N	Mobile Medical Fluoroscopic Machine	118.00
32N	Portable Medical Fluoroscopic Machine (hand carried)	118.00
33N	Motor Vehicle Mounted Medical Fluoroscopic Machine	118.00
07N	Fixed Medical Radiographic Fluoroscopic Machine	163.00
08N	Mobile Medical Radiographic Fluoroscopic Machine	163.00
34N	Portable Medical Radiographic Fluoroscopic Machine (hand carried)	163.00
35N	Motor Vehicle Mounted Medical Radiographic Fluoroscopic Machine	163.00
09N	CT Scan Machine	118.00
10N	Mammography Machine	298.00
36N	Motor Vehicle Mounted Mammography Machine	298.00
37N	Mobile Mammography Machine	298.00
11N	Medical Therapeutic Machine ≤60 kVp	118.00
12N	Medical Therapeutic Machine >61 kVp to 999 kVp	253.00
14N	Medical Therapeutic Machine 1 MeV and above	343.00
30N	Radiation Therapy Simulator Machine	208.00
38N	Biomedical (non-Human) Research Machine	140.00
17N	Industrial/Research Radiography Machine	151.00
39N	Portable Industrial Radiography Machine	151.00
40N	Shielded Room Radiography Machine	151.00
18N	Electron Beam Welder/Furnace Machine	129.00
19N	Analytical X-ray Machine ≤16 kVp	118.00
20N	Analytical X-ray Machine >16 kVp	118.00
21N	Electron Microscope Machine	106.00
22N	Cabinet X-ray Machine	106.00
23N	X-ray Baggage Machine	106.00
24N	Particle Accelerator Machine (non-medical use) ≤30 kVp	196.00
25N	Particle Accelerator Machine (non-medical use) >30 kVp	185.00
28N	Bone Densitometer Machine	95.00
41N	Machine not specifically listed above, ≤50 kVp	118.00
42N	Machine not specifically listed above, 51 kVp to 999 kVP	118.00
43N	Machine not specifically listed above, 1 MeV and above	140.00

(e) Each registrant of an ionizing-radiation-producing machine used in a veterinary facility shall pay:

1. The initial application and registration fees for each X-ray tube pursuant to (a) above, and

2. In each year after the expiration of the first year of registration established pursuant to (f) below, the annual registration renewal fee per X-ray tube as follows:

VETERINARY FACILITIES

Machine Source Category and Description		Annual Registration Renewal Fee Per X-Ray Tube
01V	Dental Machine	$ 86.00
02V	Fixed Medical Radiographic Machine	100.00
03V	Mobile Medical Radiographic Machine	100.00
31V	Portable Medical Radiographic Machine (hand carried)	100.00
04V	Fixed Medical Fluoroscopic Machine	91.00
05V	Mobile Medical Fluoroscopic Machine	91.00
32V	Portable Medical Fluoroscopic Machine (hand carried)	91.00
07V	Fixed medical Radiographic Fluoroscopic Machine	109.00
08V	Mobile Medical Radiographic Fluoroscopic Machine	109.00

(f) The expiration date of each year of registration shall be specified by the Department on the billing invoice sent to each registrant. The registration expiration date shall be based on the first letter of the registrant name as follows:

1. For a registrant whose name begins with A through F, the registration expiration date shall be August 31 of each calendar year;

2. For a registrant whose name begins with G through L, the registration expiration date shall be September 30 of each calendar year;

3. For a registrant whose name begins with M through R, the registration expiration date shall be October 31 of each calendar year; and

4. For a registrant whose name begins with S through Z, the registration expiration date shall be November 30 of each calendar year.

(g) Each registrant shall pay the initial registration application fee and annual registration renewal fee within 60 days of the date of the invoice billing issued by the Department. Any fee payment postmarked or handcarried to the Department after the invoice due

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date will be subject to a $25.00 per month late charge. If necessary, the Department will issue a second invoice. Late charges must be paid within 30 days of the second invoice. If a registrant fails to pay a fee by the original invoice due date, the registration of the ionizing-radiation-producing machine shall be deemed expired.

(h) When two or more X-ray tubes are operated from the same generator, the registrant shall pay an application fee and an annual registration renewal fee for each tube.

(i) Each registrant shall make payment only by check or money order made payable to "Treasurer, State of New Jersey." Each payment shall be accompanied by the invoice issued by the Department and shall be submitted to the address specified on the invoice: Bureau of Revenue, CN 417, Trenton, New Jersey 08625-0417.

(j) An application fee will not be charged for any machine registered pursuant to the Radiation Protection Code prior to November 16, 1987. However, the registrant shall pay the applicable annual registration renewal fee for any such machine.

HEALTH

(a)

CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND COMMISSION

Notice of Administrative Correction
Catastrophic Illness in Childen Relief Fund Program
Social and Economic Impacts

Proposed Readoption with Amendments: N.J.A.C. 8:18

Take notice that the Catastrophic Illness in Children Relief Fund Commission is correcting the Social and Economic Impact statements set forth in the proposed readoption with amendments of its rules at N.J.A.C. 8:18 published in the September 6, 1994 New Jersey Register at 26 N.J.R. 3573(a) to include data through June 30, 1994. Specifically, this new data includes that, through June 30, 1994, the Program has provided $17 million in financial assistance to 759 families, in amounts ranging from $476.00 to $566,804. In addition, the range of income for assisted families is provided. This notice is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected Social and Economic Impact statements follows:

Social Impact

The proposed amendments enable the public to better understand the Commission's review of certain eligible health services.

The rules proposed for readoption are critical to New Jersey families whose children have experienced a catastrophic illness. Many families who are in financial crisis as a result of their child's condition are still unaware of the Program. However, for the more than 759 families who have received financial assistance, the Program has provided significant relief of their medically-related debt. As public awareness is increasing, the demand for the Program requires further clarification of program eligibility requirements. Public demand has increased more than 400 percent since program inception and supports the need for this assistance for families overwhelmed in caring for an ill child.

Economic Impact

From December 1989, through June 1994, awards in amounts from $476.00 to $566,804 have been approved to assist applicant families with the expenses of their child's catastrophic illness. Families of all economic backgrounds have benefited from the Fund. Family income has ranged from $0 to $120,000. The Catastrophic Illness in Children Relief Fund is collected from more than 200,000 employers by the Department of Labor via an annual employer surcharge of $1.00 per employee, and is maintained by the Treasurer of the State of New Jersey. More than $17 million has been awarded to families from the Fund. The readoption has the benefit of further clarifying for the public the Commission's review of eligible and ineligible expenses.

The Commission continues to be interested in preserving the financial integrity of the Fund. Utilization of the Fund for appropriate and reasonable medical expenses will preserve the financial resources of the Fund for future applicants, while providing meaningful assistance to current applicant families in need.

The Commission fully supports its review and consideration of transportation expenses. The one time vehicle allowance of $25,000.00 will assist families with their initial financial burden pertaining to their daily transportation needs. Modifications to vehicles are considered additional to the vehicle allowance for the benefit of families caring for a chronically ill child, if necessary, families may submit for subsequent modifications in other applications to the program.

Eliminating the purchase of insurance will not have any impact on awards granted for families, since this was a benefit in addition to an award approved on behalf of a family.

INSURANCE

(b)

DIVISION OF PROPERTY/LIABILITY

Commercial Lines Insurance
Policy Form Standards

Reproposed New Rule: N.J.A.C. 11:13-7.4
Reproposed Recodification and Amendment: N.J.A.C. 11:13-7.4 as 7.5

Authorized By: Andrew J. Karpinski, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29AA-29.

Proposal Number: PRN 1994-509.

Submit comments by October 19, 1994 to:
Donald Bryan, Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The Department of Insurance ("Department") is reproposing a new rule and amendment to N.J.A.C. 11:13-7, which interpret provisions of the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq. and set standards for the disapproval of policy forms submitted pursuant to N.J.S.A. 17:29AA-6. These rules are derived from an interpretation of the provisions of N.J.S.A. 17:28AA-11 which authorize the Department to disapprove policy forms that are unfair, inequitable, misleading or contrary to law, or which effectively produce rates that are excessive, inadequate or unfairly discriminatory. These rules do not apply to policy forms not required to be submitted by N.J.S.A. 17:29AA-6, which with some exceptions does not require the filing of policy forms insuring "special risks" as defined in N.J.S.A. 17:29AA-3k. These rules do not apply to policy forms issued by eligible surplus lines insurers in accordance with the Surplus Lines Law. N.J.S.A. 17:22-6.40 et seq.

The Department originally proposed rules which addressed policy form standards on October 2, 1989 (see 21 N.J.R. 3057(a)). These rules prevented insurers from having an asbestos exclusion in their policy form. The rules as proposed set forth standards for aggregate policy limits; defense costs within policy limits; other provisions regarding policy limits of liability; claims made policy forms; exclusions from coverage; and the right of an insured to a listing of claims upon requests. The Department received a significant amount of adverse comment to that proposal. After due consideration of those comments, the Department reproposed and adopted rules limited to standards for defense costs within policy limits (see 23 N.J.R. 159(a) and 23 N.J.R. 2340(a)).

On March 15, 1993 (see 25 N.J.R. 1053(a)) the Department reproposed a new rule (N.J.A.C. 11:13-7.4) which prohibited the use of specific exclusions in commercial lines insurance policy forms filed for approval with the Department. The Department once again received a significant amount of adverse comment on the proposal. While that

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proposal was pending, a Court decision *In the Matter of Disapproval of Commercial Insurance Policy Forms Cigna Insurance Company,* Dkt. Nos. A-2903-9171 and A-2201-91T1 (App. Div. April 29, 1993) (unreported) required the Department to codify its disapproval policy in accordance with the Administrative Procedure Act ("APA").

In accordance with the Court's decision and the APA, the Department's disapproval policy is set forth in this reproposed new rule. The reproposed new rule prohibits the use of provisions in commercial lines insurance policy forms which exclude from coverage any bodily injury caused in whole or in part, either directly or indirectly, by asbestos, lead paint or lead contamination arising out of or incidental to the inhalation, use ingestion, handling, or contact with asbestos, lead paint or lead contamination. The Department added the term "bodily" to injury to clarify that these rules are not intended to force insurers to be responsible for fines, penalties and costs of hazard mitigation associated with asbestos, lead paint or lead contamination. The Department interprets N.J.S.A. 17:29AA-11 as authorizing it to act in the best interest of the public and the insurance market in addressing policy forms. The Department believes that asbestos, lead paint or lead contamination exclusions in certain policy forms are contrary to N.J.S.A. 17:29AA-11. Additionally the Department believes that such exclusions are contrary to public policy and the general purposes of commercial lines liability insurance to spread the risk of loss in that it is unfair, inequitable and inconsistent with the present application of statutes. The reproposed new rule formalizes the Department's current liability practices and standards with regards to the disapproving of policies filed with the Department that provide exclusions for asbestos, lead paint or lead contamination claims.

Proposed N.J.A.C. 11:13-7.4 prohibits the use of asbestos, lead paint or lead contamination exclusions in policy forms.

The existing N.J.A.C. 11:13-7.4 is recodified as N.J.A.C. 11:13-7.5 and amended to direct insurers with policy forms inconsistent with the standards and prohibitions to amend those forms and refile them within 180 days of the amendment's effective date and requires them to be in effect within 240 days of the amendment's effective date.

A summary of public comments and agency responses concerning the March 15, 1993 proposal follows:

Fifteen public comments were received from insurance companies (American International Companies, Chubb Group of Insurance Companies, Cigna, Crum and Forster, Home Insurance Company, PMA Group, Selective and Travelers), insurance associations (Alliance of American Insurers, and New Jersey Association of Mutual Insurance Comapnies), a rating organization (ISO) and agent associations (Independent Insurance Agents of New Jersey and Professional Insurance Agents).

COMMENT: One commenter stated that by removing the exclusions from coverage for liability from injuries related to asbestos, lead paint and lead contamination in commercial lines insurance policy forms the Department may force a number of insurers to opt out of the New Jersey commercial lines marketplace. The commenter noted that although it would like to see broad coverage for commercial insurance clients, a reduction in the number of markets to place this risk is potentially more dangerous and costly than remaining at the status quo.

RESPONSE: The Department disagrees with the commenter. These rules merely formalize the Department's current practices and standards with regard to the disapproval of liability policies filed with the Department that provide exclusions for asbestos, lead paint or lead contamination claims. With regard to the prospect of market availability problems, the Department recognizes that if losses from these conditions are realized, insurers may undertake to reflect those losses in their rates. The Department notes, however, that adjustments to commercial rates must be in accordance with the Commercial Lines Deregulation Act.

COMMENT: One commenter objected to N.J.A.C. 11:13-7.5(a) which requires insurers with policy forms containing provisions inconsistent with the standard set forth in the subchapter to amend and refile these forms. The commenter stated that this provision leads them to believe that there remain insurers who are currently using the exclusion and who would be forced to either drop the exclusion or withdraw from the market.

RESPONSE: The purpose of this provision is to ensure that insurers are adhering to the policy form requirements of these rules and to provide protection to insureds who expect that this type of risk is covered but may be subject to a policy form in which it is not covered.

COMMENT: One commenter objected to the Department's proposed new rules which prohibit lead paint or lead contamination exclusions in the policy forms of admitted insurers because of the Department's Order No. A92-235, which amends Order No. A92-207 and permits all surplus lines insurers to use such exclusions under certain conditions. The commenter believes that the enactment of these rules would place admitted insurers at a competitive disadvantage to surplus lines insurers at a time when admitted carriers should be encouraged to remain and expand their sources in the New Jersey commercial insurance marketplace.

RESPONSE: The Department disagrees with the commenter. Surplus lines insurers are not permitted to include absolute asbestos and lead paint exclusions in their policies. Order No. A92-235 dated July 24, 1992 provides that all surplus lines insurers may use lead paint and lead contamination exclusions in policy forms and contracts, provided the exclusion contains reduced (sublimit) coverage of $50,000 in liability policies which sublimit coverage contains no lead paint or lead contamination exclusion and which policy is written with general liability limits in excess of $50,000. Furthermore, the policy must provide that defense costs are supplemental to the $50,000 sublimit. The Department does not believe these rules place admitted insurers at a competitive disadvantage. The surplus lines market provides insurance to business and habitational risks that are not being underwritten by admitted insurers and is a market of last resort. To the extent certain risks are not insured by admitted insurers some mechanism needs to be in place to insure them.

COMMENT: One commenter stated that it has remained stable and responsive to the market through various cycles, and in order to provide stability and its clients with coverage options, it must have the ability to evaluate and underwrite various exposures. The commenter stated that in some instances, exposures have characteristics which are uncontrollable and, therefore, the commenter is unable to provide coverage without jeopardizing the overall stability of its book of business. The commenter stated that the cornerstone to insurance is the ability to access the exposure to loss, establish a price commensurate with the loss potential and spread the risk.

The commenter further stated that asbestos is a good example of an exposure with uncontrolled or unassembled characteristics. The commenter stated it is unable to obtain reinsurance to share in the exposure and is unable to adequately price for the ultimate cost of the losses associated with asbestos and therefore is unable to provide a market for this exposure.

The commenter stated that it is concerned about current proposed rules prohibiting the use of asbestos or lead paint exclusions in New Jersey because it will restrict them from providing insurance coverage for many types of contracting, residential, institutional and manufacturing operations. The commenter stated that many carriers probably will resort to writing policies with the exclusion on non-admitted paper, but since they do not write on any non-admitted paper, they would simply have to decline to offer quotations on these types of business. The commenter urged the Department to eliminate the availability of asbestos and lead paint exclusions and allow the marketplace to provide a range of coverage options.

RESPONSE: While the Department appreciates the concerns expressed by the commenter, it notes that the purpose of insurance is to spread the risk of loss, and that claims for injuries from exposure to lead paint and asbestos are the kinds of losses that should be spread by the insurance mechanism as a matter of public policy. The Department's reproposed N.J.A.C. 11:13-7.4 clarifies, however, that these rules only apply to "bodily" injury and not lead paint or asbestos cleanup or abatement. Therefore, these rules ensure coverage to insureds for injuries that resulted directly or indirectly from the inhalation, ingestion, use, handling or contact with lead paint or asbestos. As a result of these rules, insurers writing these risks will collect data that represents the exposure to loss as a result of lead or asbestos in order to establish a price commensurate with its loss potential and spread the risk accordingly. These rules do not affect exclusions for the abatement or cleanup of properties due to the presence of lead paint and asbestos. Governmental regulations may change and add cost for cleanup but the Department's rules only apply to liability for bodily injury. The Department believes that insurance coverage for contracting, residential, institutional and manufacturing operations will not be significantly affected since all insurers will be operating under similar rules.

COMMENT: One commenter stated that the adoption of the proposed rule would be ill-advised because it would probably create a severe availability problem for any risk that has a lead or asbestos exposure. The commenter stated that it considered both asbestos and lead paint to be uninsurable exposures, except under very limited circumstances.

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The commenter believes that making insurance available for lead exposures would be counter-productive, because the main thrust should be remediation. The commenter stated that allowing landlords to obtain insurance protection makes remedial action less imperative, as the landlord has less of a financial stake in correcting the problem. The commenter believes that not providing insurance for unacceptable risks is one method of influencing the elimination of unsafe conditions. The commenter stated that by prohibiting the use of such exclusions, the Department would in effect be countenancing the continuation of an unsafe lead exposure.

RESPONSE: First and third party claimants should be able to receive payment for injury that they have suffered directly or indirectly as a result of the inhalation or ingestion, use, handling, or contact with lead paint, lead contamination or asbestos. The Department notes that the prohibition on the use of lead paint, lead contamination or asbestos exclusions are on bodily injury coverages and does not extend to property coverages, for example the removal of asbestos or the mitigation of lead paint hazard. With regard to the prospect of market availability problems, the Department recognizes that if losses from these conditions are realized, insurers may undertake to reflect those losses in their rates. The Department notes, however, that adjustments to commercial rates must be in accordance with the Commercial Lines Deregulation Act.

COMMENT: One commenter stated that these rules could have an adverse impact on the financial stability of insurers. Reinsurance for lead paint and asbestos exposure will not be readily available; therefore, a small company forced to write such risks would thus be forced to bear the whole burden, which could threaten its solvency.

RESPONSE: The Department believes that it is in the best interest of the public to prevent policy exclusions for lead paint, lead contamination or asbestos. Since insurers will be permitted to justify any increased costs resulting from the prohibition on exclusions in their rate structure, the Department believes that insurer's solvency will not be at risk.

COMMENT: One commenter stated that although he believes these rules are ill advised, if they are adopted these rules should only apply to small commercial risks. The commenter believes that larger risks are capable of understanding their insurance needs and taking the necessary steps to protect themselves. The commenter suggested that small commercial risk should be considered anything that generates less than $10,000 in annual premium.

RESPONSE: The commenter appears to be suggesting that the prohibition of exclusions be limited by permitting the exclusion for risks that are not "special risks." Pursuant to N.J.S.A. 17:29AA-3k(2) "Special risks" mean . . . commercial lines insurance risks which produce minimum annual premiums in excess of $10,000.00. Pursuant to N.J.S.A. 17:29AA-6 and N.J.S.A. 17:29AA-3k(2) such risks are not exempt from form filing requirements. N.J.S.A. 17:29AA-6 provides that insurers shall file copies of all policy forms (regardless of size) for approval with the Commissioner at least 30 days prior to becoming effective. These rules provide policy form standards which the Department will use to disapprove policy forms that are unfair, inequitable, misleading or contrary to law or which effectively produce rates that are excessive, inadequate or unfairly discriminatory. The Department does not believe there is a need to differentiate based upon an insurer's size because all companies writing these risks should be required to adhere to the same rules.

COMMENT: Several commenters objected to the proposed rules because they believed that these rules are contrary to law and that the Commissioner has no statutory authority to adopt these rules because these rules are *ultra vires,* arbitrary, capricious, unreasonable, and violative of an insurer's right to contract freely. One commenter specifically stated that in no general insurance statutes has the Legislature authorized the Commissioner to compel insurers by rule to provide asbestos and lead paint coverage in commercial and property liability insurance policies. The commenter further stated that the Legislature has specifically instructed that the Commissioner may only adopt such rules as may be authorized by law and which are not inconsistent with the provisions of Title 17 of the New Jersey Statutes.

The commenter believes that the rulemaking powers of the Commissioner do not include the power to set aside terms of insurance policies when those terms are neither illegal nor contrary to any policy expressed in insurance laws. The commenter stated that the Commissioner may thus only adopt a rule which prohibits asbestos and lead paint exlcusion in commercial lines policy forms and thereby mandate coverage if he is statutorily authorized to do so by the Legislature. The commenter stated that only the Legislature has "the power to compel insurers to cover people they would rather not insure."

Finally, the commenter expressed concern with the Department's proposed new rules because he believes that the general insurance statutes reveals no express grant of authority to require commercial lines insurers to provide coverage for liability for injuries related to asbestos, lead paint and lead contamination.

The commenter stated that the New Jersey Statutes permits the Commissioner to disapprove an individual insurer's filed policy form if it is unfair, inequitable, misleading or contrary to law or if it shall produce rates that are excessive, inadequate or unfairly discriminatory, and only then if he specifies in what respects the form is not in compliance with the standards set forth in N.J.S.A. 17:29AA-11.

RESPONSE: The Department disagrees with the commenters. These rules interpret provisions of the commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq., and formalize the Department's current practices and standards with regard to the disapproval of liability policies filed with the Department that provide exclusions for asbestos, lead paint or lead contamination claims. These rules are derived from an interpretation of the provisions of N.J.S.A. 17:29AA-11 which authorize the Department to disapprove policy forms that are unfair, inequitable, misleading or contrary to law or which effectively produce rates that are excessive, inadequate or unfairly discriminatory.

The Department interprets N.J.S.A. 17:29AA-11 as authorizing it to act in the best interest of the public and the insurance market in addressing policy forms. The Department believes that asbestos, lead paint or lead contamination exclusions in certain policy forms for injuries arising out of or incidental to their inhalation, use, ingestion, handling or contact are contrary to public policy and that commercial policy forms containing these exclusions are, therefore, unfair, inequitable or contrary to law, and produce excessive rates. (In fact, no insurer has quantified or segregated losses from lead paint or asbestos liabilities in New Jersey and no insurer has filed for a rate decrease as a result of not providing these coverages.)

COMMENT: Two commenters stated that the proposed new rules are contrary to sound public policy. Additionally, the commenter stated that these proposed rules eliminate individual insurers action, destroys competition over policy terms, imposes unnecessary costs on businesses, and will eliminate coverage altogether for some businesses and eliminates incentives for asbestos and lead remediation.

RESPONSE: The Department disagrees with the commenter. The Department intends for these rules to provide protection for payment to first and third party claimants who may sustain bodily injury directly or indirectly by asbestos, lead paint or lead contamination. The Department does not believe these rules destroy competition among insurers. These rules provide a standard for policy form approval which applies to all policy forms submitted in accordance with N.J.S.A. 17:29AA-6, thereby placing insurers on equal footing and allowing competition among insurers specifically with respect to price and the various types of policies (which are consistent with these rules) that may be approved. The Department does not intend for these rules to apply to fines, penalties or upgrade costs associated with building clean up for asbestos, lead paint or lead contamination. Therefore these rules are in furtherance of public policy and merely formalize prohibitions currently being applied to the acceptance of commercial insurance policy form filings.

COMMENT: One commenter objected to the term "property liability policy." The commenter stated that this is not a recognized term in the insurance field. The commenter stated that the scope of policies reached by these rules are unclear.

RESPONSE: N.J.A.C. 11:13-7.4 as reproposed specifies that the coverage referred to in this section are fire insurance and general liability insurance.

COMMENT: The commenter also stated that the proposed rule applies to "form(s) required to be filed." The commenter asked whether this applies to policies issued out-of-State that cover New Jersey risks.

RESPONSE: The phrase "forms(s) required to be filed" applies to any situation in which a New Jersey risk is involved. These rules do not apply to policy forms which are not required to be submitted pursuant to N.J.S.A. 17:29AA-6. These rules also do not apply to policy forms issued by eligible surplus lines insurers in accordance with Surplus Lines Law N.J.S.A. 17:22-6.40 et seq.

COMMENT: One commenter questioned what the term "injury" meant. The commenter asked if it meant mere financial injury, or is it limited to bodily injury and property damage. The commenter stated that if it is the former, does it force insurers to cover fines, penalties and upgrade costs for building law violations associated with lead or asbestos.

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Additionally, the commenter asked if the rule modifies the occurrence definition and the exclusion for an employer's liability to its employees. Finally, the commenter questioned if this rule means that a lead-related workers compensation injury is now covered under the General Liability Policy.

RESPONSE: As the Department has stated in response to a previous comment, these rules are not intended to force insurers to be responsible for fines, penalties and costs of hazard mitigation associated with asbestos, lead paint or lead contamination. These rules are intended to provide protection for persons who may be injured directly or indirectly by asbestos, lead paint or lead contamination. These rules are not intended to modify the occurrence definition or the exclusion for an employer's liability to its employees. Lead related workers compensation injuries should still be covered under workers compensation policies.

COMMENT: One commenter stated that basic underwriting principles, such as randomness and fortuity, are lost when insurers are asked to provide insurance coverage for preexisting conditions such as the presence of lead based paint in buildings. The commenter stated that the potential exposure associated with bodily injury, property damage, and abatement of lead-based paint is enormous. The commenter stated that insurers will be faced with an adverse selection problem as owner/operators of buildings containing lead-based paint seek coverage in order to remove the paint and respond to alleged bodily injuries.

RESPONSE: The Department believes that it is in the best interest of the public to provide protection to insureds for bodily injury liability claims for persons who may be injured directly or indirectly by asbestos, lead paint or led contamination. Since the Department does not intend to extend this protection to the removal or abatement of lead paint or asbestos, the Department is not persuaded that this rule will result in an adverse selection problem.

COMMENT: One commenter objected to N.J.A.C. 11:13-7.4(a) which prohibits exclusions for injuries caused by asbestos. The commenter stated that many insurers do not attach specific "absolute asbestos exclusions" to their Commercial General Liability Policies and other liability policies because of the widely-held belief that the absolute pollution exclusion contained in or attached to the policy will exclude any asbestos exposure in its entirety. The commenter believes that this is one belief relied upon by ISO in deciding not to file an "absolute asbestos exclusion" on a nationwide basis. The commenter stated that if N.J.A.C. 11:13-7.4(a) was adopted it would not achieve its intended objective of compelling insurers to provide coverage for abestos exposure because insurers would deny liability for this exposure under the pollution exclusion.

The commenter also noted that a number of courts began issuing rulings that absolute pollution exclusions do not encompass asbestos liability, and that prohibiting the use of such exclusions will prove to be impractical. The commenter believes that the public's continued awareness of the dangers of asbestos will lead to an increasing number of claims relating to this exposure. The commenter stated that faced with a choice of either being coerced to provide coverage for asbestos liability or withdrawal from the market, the high severity nature of asbestos claims may force some insurers to withdraw from the commercial liabilty market. Finally, the commenter stated that the effect of the Department's regulation may again be to cause those very insureds which it intends to help to seek coverage in the surplus lines market.

RESPONSE: These rules formalize current Department standards for the disapproval of policy forms that contain an asbestos, lead paint or lead contamination exclusion. The Department will not approve an absolute pollution exclusion that defines asbestos or lead paint as a pollutant or exclusion. These rules do not apply to fines, penalties and upgrade costs for building code violations associated with building cleanup for asbestos, lead paint or lead contamination, and insurers may be permitted to justify any increased costs or losses resulting from the prohibition of exclusions in their rate structure.

The Department is attempting to provide uniformity of coverage among insurers that write this type of coverage.

Social Impact

The reproposed new rule articulates prohibitions currently being applied by the Department for the acceptance of commercial insurance policy forms filings. The primary impact is to notify insurers filing the forms of policy language that is not acceptable. These standards and prohibitions set forth policy form language which is consistent with the fair and reasonable expectation of coverage for insureds who purchase commercial liability insurance on forms filed with the Department. The reproposed new rule prohibits asbestos, lead paint or lead contamination exclusions in policy form provisions.

Economic Impact

The reproposed new rule and proposed amendment will affect the Department and insurers which file commercial insurance policy forms. Initially, some additional administrative and clerical costs will be incurred in order to comply with the new rule and amendment. Insurers with inconsistent policy forms must refile policy forms for acceptance by the Department which are consistent with these rules and in accordance with N.J.S.A. 17:29AA-6 and 17:29AA-11. Costs will be limited to those insurers whose policy forms are contrary to the asbestos, lead paint or lead contamination exclusion prohibition set forth in the reproposed new rule. It is expected that insurers and the Department will experience this cost on a one-time basis during the initital filing of policy forms. The Commercial Insurance Deregulation Act permits insurers to price policies based on expenses and expected losses, limited by N.J.S.A. 17:29AA-10 which prohibits rates that are excessive, inadequate or unfairly discriminatory. The Department recognizes that if losses from these conditions are realized, insurers may undertake to reflect those losses in their rates in accordance with the Commercial Lines Deregulation Act.

Regulatory Flexibility Analysis

The "small businesses" affected by the reproposed new rule and proposed amendment consist of insurance companies authorized to write commercial insurance. However, few, if any, insurers regulated by the new rule and amendment are "small businesses" as defined in N.J.S.A. 52:14B-16 et seq. The purpose of these rules is to establish minimum standards for policy forms used by all insurers; therefore, it would be unfair and inconsistent to establish different standards based upon company size. The economic impact of the reproposed new rule and amendment is minimal. Coverage is provided for asbestos, lead paint or lead contamination claims in current accepted policy forms; therefore, these rules merely formalize the Department's current liablity standards and practices. All insurers, regardless of size, are required to file certain commercial lines policy forms with the Department pursuant to N.J.S.A. 17:29AA-6 and N.J.S.A. 17:29AA-11. Most insurers either have in-house staff to develop their own policy forms, or utilize standard policy forms developed by a rating organization of which they are a member or subscriber. Accordingly, there are no additional costs of professional services required to comply. Furthermore, it should be noted that by setting forth these standards in an administrative rule, insurers that qualify as small businesses will avoid to cost of submitting and having disapproved policy forms inconsistent with the Department's standards.

The amended rule provides a six month (180 day) period after its effective date during which policy forms that are inconsistent with the standards must be amended and refiled. The rule further provides that the form shall be effective no later than 240 days from the actual date the amendment is effective. This provides an adequate time period for all insurers, regardless of size, to comply with the requirements of the reproposed rule and amendment.

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

11:13-7.4 Exclusions from coverage

(a) No commercial lines or fire insurance policy or general liability insurance policy or package policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 which contains provisions excluding coverage for any bodily injury caused in whole or in part, either directly or indirectly, by:

1. Asbestos, or arising out of or incidental to the inhalation, use, handling, or contact with asbestos; or

2. Lead paint or lead contamination, or arising out of or incidental to the inhalation, ingestion, use, handling, or contact with lead paint or lead contamination.

(b) In the event that any policy form includes exclusions or restrictions of coverage as set forth in (a) above, the forms shall also contain provisions, which may be in the form of a mandatory endorsement, so as to incorporate these standards into the terms of each policy.

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11:13-[7.4]**7.5** Refiling policy forms

(a) Insurers with policy forms containing provisions inconsistent with the standard set forth in this subchapter shall amend those forms and refile them in accordance with N.J.S.A. 17:29AA-6 [by February 1, 1992.] **as follows:**

1. For N.J.A.C. 11:13-7.3, by February 1, 1992; and

2. For N.J.A.C. 11:13-7.4, by (180 days from the effective date of this amendment) and the forms shall be effective no later than (240 days from the effective date of this amendment).

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

(a)

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Good Faith Marketing Report

Proposed Amendment: N.J.A.C. 11:20-9.6

Authorized By: New Jersey Individual Health Coverage Program Board, Charles Wowkanech, Chair.

Authority: N.J.S.A. 17B:27A-2 et seq.

Proposal Number: PRN 1994-510.

Submit written comments by September 7, 1994 to:
New Jersey Individual Health Coverage Program
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments are being promulgated in accordance with P.L. 1993, c.164, section 8, which provides a special procedure whereby the Individual Health Coverage Program ("IHC") Board may adopt certain actions. Pursuant to this procedure, the Board is required to publish notice of its intended action in three newspapers of general circulation, which notice shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views regarding the intended action. Notice of the intended action also is required to be sent to affected trade and professional associations, carriers, and other interested persons who may request such notice.

Concurrently, the Board is required to forward the notice of the intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board must provide a minimum 20-day period for all interested persons to submit their written comments on the intended action to the Board. The Board may adopt its intended action immediately upon the close of the specified comment period by submitting the adopted action to the OAL. If the Board elects to adopt the action immediately upon the close of the comment period, it shall nevertheless respond to the comments timely submitted within a reasonable period of time thereafter. The Board shall prepare a report for public distribution, and publication by the OAL in the New Jersey Register. The report shall include the list of commenters, their relevant comments, and the Board's responses.

The Board proposes amendments to N.J.A.C. 11:20-9.6 which required carriers that requested an exemption from assessment for 1993 reimbursable losses to submit a report to the Board by July 1, 1994 that details the efforts they undertook to market and sell individual health benefits plans. The report was necessary for the Board to determine whether the carrier made a good faith effort to enroll the minimum number of non-group persons, as required by N.J.A.C. 11:20-9.5(f)(2), in 1993 and for the Board to collect data on marketing methods used by carriers in order to develop a standard for judging whether a carrier had undertaken adequate efforts to market individual health benefits plans.

The proposed amendments would require good faith marketing reports on a yearly basis from those carriers requesting an exemption which have enrolled less than half of the minimum number of non-group persons as determined by the Board pursuant to N.J.A.C. 11:20-9.3. The proposed amendments require these carriers to file a marketing report by July 1 of the year following the year for which the exemption from assessment was requested. This amendment is necessary to determine if a carrier has made a good faith effort to enroll non-group persons in years after 1993.

The amendments also would create a standard by which the Board would review submissions of marketing reports for a determination of whether the carrier has undertaken a good faith marketing effort. This standard, based on a review of the marketing reports submitted to the Board by carriers seeking exemptions from 1993 reimbursable losses, permits to a carrier to meet its marketing obligations if it has either undertaken a significant media advertising campaign in support of sales of standard health benefits plans or if it has undertaken significant efforts to educate licensed insurance producers about its standard health benefits plans and has competitive commission schedules for these plans and competitive rates. This proposed amendment is necessary to set an articulable standard by which the Board must analyze carrier marketing reports.

Social Impact

The proposed amendments would create a reporting requirement on those carriers seeking an exemption for years after 1993. The information collected will be used by the Board in determining whether a carrier that has received a conditional exemption should receive a final exemption. A carrier that cannot demonstrate a good faith marketing effort will not receive an exemption from assessments for reimbursable losses.

Economic Impact

The proposed amendments, like the original rule, will have a minor economic impact on carriers that will seek exemptions from assessments for reimbursable losses. These carriers will be required to compile and submit information to demonstrate what marketing activities they undertook to sell individual health benefits plans. If a carrier is unable to demonstrate a good faith effort, it will not receive a final exemption and will be required to pay the same share of reimbursable losses as if the carrier had not received a conditional exemption.

Regulatory Flexibility Analysis

The Board believes that all carriers subject to this amended rule have in excess of 100 employees or are located outside the State of New Jersey. Therefore, a regulatory flexibility analysis is not required. However, to the extent that any carrier might be considered a small business under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following analysis would apply.

Compliance costs with the reporting requirement imposed on any affected carriers should not be great. Further, it is not anticipated that professional services will be required for compliance. An exemption from the reporting requirements of the amendments for small businesses would be inappropriate as it is essential that all carriers seeking and receiving an exemption from reimbursable losses make a good faith effort to market individual health benefits plans, and a review of a carrier's good faith marketing report is the Board's only realistic method of evaluating a carrier's efforts.

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

11:20-9.6 Good faith marketing report

(a) In order for the Board to determine whether a carrier has made a good faith marketing effort as required by N.J.A.C. 11:20-9.5(f)2, members that **have** requested exemptions from assessments for [1993] reimbursable losses **and have enrolled less than 50 percent of the minimum number of non-group persons determined by the Board** shall submit to the Board a marketing report on or before July 1[, 1994] **of the year following the calendar year for which the exemption was requested** containing the following information pertaining to advertising, marketing, and promotion efforts in direct support of sales of standard health benefits plans [in calendar year 1993]:

1.-5. (No change.)

(b) (No change.)

(c) The Board will review the marketing reports submitted and determine that a carrier has made a good faith marketing effort as required by N.J.A.C. 11:20-9.5(f)2 if the carrier has demonstrated that it has either:

1. Undertaken a significant media advertising campaign, in proportion to its minimum enrollment share, in direct support of sales of standard health benefits plans; or

2. Undertaken significant efforts, in proportion to its minimum enrollment share, to educate licensed insurance producers about its

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standard health benefits plans and has offered to pay competitive commission schedules for sales of such plans and competitive rates.

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

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Boilers, Pressure Vessels and Refrigeration

Proposed Readoption with Amendments: N.J.A.C. 12:90

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1-47, 34:1A-3(e) and 34:7-18.

Proposal Number: PRN 1994-521.

A **public hearing** on the proposed readoption will be held on the following date at the following location:

Wednesday, October 12, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by October 19, 1994 to:

Deirdré L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, please contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:90 will expire on December 15, 1994. The Department has reviewed the rules proposed for readoption and, with the exception of the amendments described below, has determined them to be necessary and proper for the purposes for which they were originally promulgated and is, therefore, proposing them for readoption at this time.

This chapter was originally filed and became effective prior to September 1, 1969. Amendments were filed and became effective March 11, 1976. Chapter 90 was repealed and a new chapter 90 adopted effective December 17, 1984. Subsequent amendments were made at the subchapter and section levels. The chapter was further amended upon readoption on January 16, 1990.

The chapter provides an indispensable set of standards governing the licensing of engineers and the protection of life and property in the use of boilers, pressure vessels and refrigeration units. Subchapter 1 sets forth general provisions, including the purpose and scope. Subchapter 2 provides the definitions used throughout the chapter. Subchapter 3 addresses such topics as licenses for boilers, power generating plants, and refrigeration systems, and outlines the duties of licensed persons. Subchapter 4 concerns various types of boilers, and discusses their inspection and registration. Subchapter 5 addresses unfired pressure vessels, their design criteria, inspection and registration. Subchapter 6 discusses refrigeration systems. Subchapter 7 addresses licensing of operating engineers and firemen. Subchapter 8 lists the standards and publications referred to in the subchapter. It is noted that the proposed readoption with amendments has been reviewed by the Board of Boiler, Pressure Vessel and Refrigeration Rules ("Board").

Proposed amendments deemed necessary for the effective operation of the program are provided. N.J.A.C. 12:90-2.1 is being amended to define terminology used throughout the chapter. Specifically, the term "boiler" is being amended to include waste heat units. Such amendment is necessary in order to avoid undue hardship on the fast growing co-generation power industry which uses waste heat as a means of firing its boilers. The term "power boiler" is being replaced with "high pressure boiler" to keep the definition consistent with N.J.A.C. 12:90-3.4 and Table 3.4. The term "heat recovery steam generator" is being added because the latest engineering technology has utilized high efficiency waste heat produced by gas turbines or diesel generators as a means of producing and generating heat as a means of firing a boiler. The term "prime mover" is being added because individuals who have experience on steam driven prime movers may obtain an oeprator's license in accordance with N.J.A.C. 12:90-3.7. The term "major repair" is being changed to "welded repair" because the National Board Inspection Code adopted by N.J.A.C. 12:90-5.12(a)3 does not address major or minor repairs. The proposed amendment is also necessary because N.J.A.C. 12:90 indicates that welded repairs are currently required to be performed by qualified organizations. In addition, the term major repair is inconsistent with industry verbiage and causes great confusion with repair concerns within the State of New Jersey. The term "occupied building" is being added to define when a building is deemed occupied for the purposes of determining when a building requires a licensed low pressure boiler operator. The term "shop inspection" is being amended to clarify the activities required by the American Society of Mechanical Engineers (ASME) and National Board as stated in their by-laws and by N.J.A.C. 12:90-4.2 and 5.1. Although these activities have been performed by the Office of Boiler and Pressure Vessel Compliance since the office was established, they were not previously included by regulation.

N.J.A.C. 12:90-3.3(a) and 3.5(b) are being amended to clarify that a building requires a licensed low pressure boiler operator only when the buiding or buildings being served is deemed occupied.

N.J.A.C. 12:90-3.9(a) is being amended to clarify that it is not necessary for employers to maintain chief engineers for low pressure boiler systems. N.J.A.C. 12:90-3.9(c) is being amended to clarify that the designation of chief engineer shall be in writing and on file at the plant location where the chief engineer is employed.

N.J.A.C. 12:90-3.11(c) is being amended to reflect that repairs and alterations are also an integral part of continuing the safe operation of boilers. N.J.A.C. 12:90-3.11(d) is being amended to allow for the sale of new or used pressure vessels which meet regulatory requirements.

N.J.A.C. 12:90-4.2(b) is being amended to adopt the safety standards delineated in the most current editions to the ASME Code. N.J.A.C. 12:90-4.2(c) is being amended to adopt the 1989 edition of the National Board Inspection Code since that edition is less restrictive than the 1987 and 1992 editions. Although the 1992 edition is the most current edition, it is believed that its adoption would place economic hardship on repair concerns in New Jersey. In addition, safety is not comprised by adopting the 1989 edition. N.J.A.C. 12:90-4.2(d) clarifies that individuals engaged in all boiler activities must adhere to compliance standards.

N.J.A.C. 12:90-4.6 is being amended to clarify that the ASME Code requires that in addition to set discharge pressure, the safety relief valves also discharge at the specified rated relieving capacity. This proposed amendment will prevent severe boiler explosions and will impose no economic impact on the users of boilers.

N.J.A.C. 12:90-4.7(g) is being added to keep the repair of boilers and pressure vessels consistent with other subchapters of N.J.A.C 12:90.

N.J.A.C. 12:90-4.8(a) is being amended to adopt the 1989 edition of the National Board Inspection Code since that edition is less restrictive than the 1987 and 1992 editions. Although the 1992 edition is the most current edition, it is believed that its adoption would place economic hardship on repair concerns in New Jersey. In addition, safety is not compromised by adopting the 1989 edition. N.J.A.C. 12:90-4.8(c) is being amended to reflect that the National Board Inspection Code does not address minor repairs. N.J.A.C. 12:90-4.8(d) is being amended to clarify that the insurance company must have authorized inspectors who hold a New Jersey Certificate of Competency as stipulated by law. N.J.A.C. 12:90-4.8(e) is being amended to remove the mandate that a record of welded repairs be filed with the Office of Boiler and Pressure Vessel Compliance. N.J.A.C. 12:90-4.8(f) is being amended to provide the welded repair concern additional repair/alteration latitude in accordance with the National Board Inspection Code 1989 edition at N.J.A.C. 12:90-4.8(g), fees for registration of these reports shall be $2.00 for each boiler and shall be forwarded to the Office of Boiler and Pressure Vessel Compliance for registration.

N.J.A.C. 12:90-4.9(c) is being amended to clarify the State of New Jersey's position that both a supervisor and inspector are required to be present during the review of a firm's facilities and quality control system. N.J.A.C. 12:90-4.9(g) is being amended to allow the welded repair concern additional repair/alteration latitude in accordance with

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the National Board Inspection Code 1989 edition. N.J.A.C. 12:90-4.9(h) is being deleted to ensure public safety since New Jersey "R" Stamp holders do not have the design knowledge or capability to add nozzles and ascertain whether nozzles added require a compensation of opening design rational.

N.J.A.C. 12:90-4.10 is being amended to eliminate the requirement for frequent draining and filling of low pressure hot water heating boilers, by requiring internal inspection at 24-month intervals.

N.J.A.C. 12:90-4.12 is being amended to reflect the increase in inspection fees allowed by N.J.S.A. 34:7-15(c). Fees are increased from $18.00 to $25.00 for each boiler inspected; daily visits from $120.00 to $160.00 for inspections under four hours; and daily visits from $225.00 to $300.00 for inspections exceeding four hours.

N.J.A.C. 12:90-5.2(b) is being amended to adopt the safety standards delineated in the most current edition to the ASME Code. N.J.A.C. 12:90-5.2(c) is being amended to adopt the 1989 edition of the National Board Inspection Code since this edition is less restrictive than the 1987 and 1992 editions. Although the 1992 edition is the most current edition, its adoption would place economic hardships on repair concerns in New Jersey. In addition, safety is not compromised by adopting the 1989 edition. N.J.A.C. 12:90-5.2(d) is being amended to clarify that individuals engaged in boiler activities are required to adhere to compliance standards.

N.J.A.C. 12:90-5.4(d) is being amended to bring N.J.A.C. 12:90-5.4(d) in line with subsections (a) through (c) by replacing "may" with "shall." This amendment is necessary to ensure continued registration of data reports.

N.J.A.C. 12:90-5.9(b)4 is being amended to reflect the increase in fees provided by N.J.S.A. 34:7-15(c), from $1,000 to $1,500 as a fee for letters of application for each non-code design. N.J.A.C. 12:90-5.9(b)5 is being amended to clarify what commissions authorized inspectors must hold. N.J.A.C. 12:90-5.9(h) is being amended to reflect that modern computer modeling allows the designer to design a pressure vessel on the computer and then apply various superimposed dynamic loadings to all high stress areas on the vessel computer model.

N.J.A.C. 12:90-5.12(a) is being amended to adopt the 1989 edition of the National Board Inspection Code since this edition is less restrictive than the 1987 and 1992 editions. Although the 1992 edition is the most current edition, its adoption would place economic hardships on repair concerns in New Jersey. In addition, safety is not compromised by adopting the 1989 edition. N.J.A.C. 12:90-5.12(c) is being amended to remove the mandate that a record of welded repairs be filed with the Office of Boiler and Pressure Vessel Compliance. N.J.A.C. 12:90-5.12(d) is being amended to allow the welded repair concern additional latitude in accordance with the National Board Inspection Code 1989 edition. N.J.A.C. 12:90-5.12(e) is being amended to provide the same $2.00 per unfired pressure vessel fees for the filing of reports of alteration as those imposed for filing data reports.

N.J.A.C. 12:90-5.14 is being amended to reflect the increase in inspection fees provided by N.J.S.A. 34:7-15(c), as discussed above concerning N.J.A.C. 12:90-4.12.

N.J.A.C. 12:90-7.18 is being amended to provide that a licensee whose license is suspended or revoked has the right to request a hearing conducted in accordance with N.J.S.A. 34:7-3.

N.J.A.C. 12:90-7.20 is being amended to clarify that emergency operating permission is a stop gap measure an employer may utilize until he has trained a boiler operator or hired one and not as a permanent fix. Accordingly, the proposed amendment limits the amount of time a facility can operate without licensed operators.

N.J.A.C. 12:90-8.1 is being amended to reflect new titles of ASME Code and the additions of new sections of the Code. The amendments have no economic impact on the public but addresses editorial corrections only.

The Department is also proposing, as appropriate, changes that include typographical corrections, technical clarifications and the elimination of verbiage throughout the rules.

Social Impact

The proposed readoption will enable the Department to continue to help protect the lives of those who operate and are affected by boilers, pressure vessels and refrigeration units. By maintaining strict licensing and enforcement procedures, the Department can help eliminate accidents caused by human error and equipment failure. The Department anticipates that the proposed amendments will have a positive impact on effected industries because they will bring the State regulations in conformance with recognized national standards.

Economic Impact

The Department does not foresee any significant economic impact on employers or the general public as a result of the proposed readoption with amendments. Costs incurred in maintaining equipment in accordance with these standards are necessary to ensure equipment safety. Operators and owners of equipment should not experience increased costs in maintaining the equipment in accordance with the standards established by the Department.

The proposed fee increases are necessary to maintain some level of consistency with fees charged by the private sector for identical services. However, it is noted that the proposed fees are still significantly lower than those charged by the private sector. The proposed fee for registration of boiler alteration reports is necessary to provide consistency with the fee charged for registering data reports for unfired pressure vessels.

The Department will experience some costs as a result of the licensing procedures set forth in the proposed readoption with amendments. However, these costs are expected to be absorbed by the existing budget and licensing fees.

Regulatory Flexibility Analysis

The proposed readoption with amendments imposes reporting, recordkeeping and compliance requirements on business, some of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The affected small businesses are those which operate boilers, pressure vessels and refrigeration systems.

The rules require that boilers, steam driven prime movers in power generating plants, and refrigeration systems using toxic or flammable refrigerants be operated by specific classes of Department-licensed chief engineers, shift engineers and/or boiler operators, at specific power or capacity levels. Subchapters 4 through 6 impose specific, technical requirements for the design, construction, inspection, installation, repair and alteration of certain steam or hot water boilers, unfired pressure vessels, and refrigeration systems, respectively. These standards incorporate by reference various editions of ASME, National Board Inspection and BOCA codes. Fees for shop and field inspections by the Department are imposed. Registration of those boilers, vessels and systems is required, along with proper display of a State inspection certificate. Specific amendments to these requirements are discussed in the Summary above.

Small business compliance costs will include the varying costs of maintaining their boilers, pressure vessels and refrigeration systems in compliance with these safety-based technical standards, and the fees for Department inspections. Employment of the required licensed individuals as operators is also required, at salaries agreed upon between the parties. Purchasers of new boilers, pressure vessels and refrigeration systems subject to this chapter will also incur the cost of ensuring that the purchased equipment meets the standards imposed.

It is necessary to apply these standards to all boiler, pressure vessels and refrigeration unit operators and owners, regardless of business size, as it is imperative to impose and enforce uniform standards for protection of the public's safety.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:90.

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

12:90-2.1 Definitions

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

. . .

"Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuumn for external use by the direct application of heat. The term "boiler" shall include fired **or waste heat** units **used** for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

1.-3. (No change.)

4. "High pressure boiler" means a power boiler in which steam or other vapor is generated at a pressure of more than 15 psig. High pressure boiler also means a high temperature, high pressure water boiler or heat recovery steam generator.

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[4.]**5.** "High temperature water boiler" means a water boiler operating at a pressure exceeding 160 psig or a temperature exceeding 250 degrees Fahrenheit.

[5. "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig. Power boiler also means a high temperature, high pressure water boiler.]

6. "Heat recovery steam generator" means a high pressure boiler in which steam or other vapor is generated and where steam is super heated. The term "heat recovery steam generator" shall include both fired and indirect fired units whose heat source is derived from duct burners and/or waste exhaust gasses.

. . .

["Major repair" means a repair affecting the strength of a boiler or pressure vessel or other equipment.]

. . .

"Occupied building" means a building which is occupied by persons other than custodial or security personnel. A building is not deemed to be occupied solely on the basis of attendance by custodial or security personnel.

. . .

"Prime mover" means a turbine, pump or other steam driven device which produces work (energy).

. . .

"Shop inspection" means an inspection performed when [the] **any** boiler or pressure vessel is being **constructed,** fabricated or undergoing [major] **welded** repair. **Such inspections shall include National Board audits and joint reviews as required and assigned by the ASME and National Board.**

. . .

"Welded repair" means a repair affecting the strength of a boiler or pressure vessel or other equipment.

12:90-3.3 Equipment requiring a licensed operator

(a) No person shall operate the equipment listed below without the appropriate license as specified in N.J.A.C. 12:90-3.4 through 3.8.

1. (No change.)

2. A steam or hot water heating plant with an indicated or rated capacity that exceeds either 499 square feet of heating surface, or 100 boiler horsepower, or 1,000 kilowatts, or 4,000,000 Btu input regardless of pressure or temperature conditions **only when the building or building being served is deemed occupied**;

3.-6. (No change.)

12:90-3.5 Licenses for low pressure boilers

(a) (No change.)

(b) No unlicensed person shall operate a low pressure steam or hot water heating boiler in which the rated capacity exceeds 100 horsepower or 499 square feet **of** heating surface or 4,000,000 Btu input or 1,000 kilowatts regardless of pressure or temperature conditions **only when the building or building being served is deemed occupied**.

(c) (No change.)

12:90-3.9 Chief engineer and scope of certain licenses

(a) When more than one licensed person is required to operate a **high pressure** boiler, refrigeration system, or power generating plant, whether or not the operators are employed on the same shift, the management of the plant shall designate a chief engineer. **Chief engineers are not required for low pressure systems.**

(b) (No change.)

(c) The engineer designated as chief engineer shall be permitted to serve as chief engineer in one plant location only and must be a full-time employee of the company responsible for the operation of the **high pressure** boilers, power generating or refrigeration systems. **The designation shall be in writing and be on file at the plant location where the chief engineer is employed.**

(d)-(j) (No change.)

12:90-3.10 Duties of licensed persons

(a) (No change.)

(b) Licensed persons on watch shall give constant attention to high pressure boilers and refrigeration systems.

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

12:90-3.11 Duties of others involved

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

(c) Users of boilers, pressure vessels, refrigeration systems and other equipment subject to the inspection and licensing acts, shall be guided by their authorized inspectors relative to the jurisdiction of the Office of Boiler and Pressure Vessel Compliance for purposes of registration, certification, licensing, **repairs and alterations**.

(d) No person shall contract for or purchase new or used boilers or unfired pressure vessels for which [do] **does** not comply with the applicable ASME Code **except as provided for in N.J.A.C. 12:90-5.3 through 5.9**. The applicable ASME Code shall be specified in such transactions.

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

12:90-4.2 Compliance with referenced standards

(a) (No change.)

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code—[1989] **1992 edition with addenda** are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1.-9. (No change.)

(c) The National Board Inspection Code—[1987] **1989** is adopted as the safety standard under this subchapter and shall apply according to the provisions thereof, except that the following sections shall not apply:

1.-2. (No change.)

(d) Each person engaged [with] **in the design, construction, fabrication, installation, repair and alteration of** boilers shall protect the public by complying with the standards prescribed in (b) and (c) above.

(e)-(g) (No change.)

12:90-4.5 Low pressure boilers

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

(e) When [the] low pressure boilers are connected to a common header, the connections from each boiler having a manhole opening shall be fitted with two stop valves having adequate free-blow drains which shall be located between the stop valves.

1.-2. (No change.)

12:90-4.6 Relief device settings

All boilers shall have relief devices set to discharge at [a] **the rated relieving capacity and** pressure in accordance with the requirement contained in the applicable ASME Code.

12:90-4.7 Steam boiler blowdown tanks and receivers

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

(d) Construction of blowdown tanks:

1. The minimum metal thickness of blowdown tanks, whether of the pressure or atmospheric type, shall be not less than [five-sixteenths] 5/16 inch.

2.-3. (No change.)

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

(g) Repairs and alterations to blowdown tanks and separators shall be in accordance with N.J.A.C. 12:90-5.12.

12:90-4.8 Welded repairs and alterations to boilers

(a) Welded repairs and alterations to boilers shall comply with:

1.-2. (No change.)

3. The National Board Inspection Code—[1987] **1989** edition.

(b) (No change.)

(c) The ASME Code validity of piping repairs shall be maintained to the boundaries defined in Section I, Power Boilers for high pressure boilers and to the required stop valve connection for low pressure heating boilers [except for minor repairs].

(d) All **plans for welded** repairs to boilers or connected piping shall be approved [by a New Jersey authorized inspector holding] **prior to the start of welded repairs by a** National Board [Commission] **commissioned inspector with a valid New Jersey Certificate**

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of Competency who is employed by an **authorized** insurance company or the State of New Jersey and performed under [his] **their** guidance **and certified at the completion of the welded repairs**.

(e) A record of [major] welded repairs shall be filed with the Office of Boiler and Pressure Vessel Compliance **when requested**.

(f) Alterations to boilers shall be performed by the appropriate Code symbol holder [only] or a National Board Alteration Certificate holder.

(g) An alteration report and a copy of the original manufacturer's data report shall be filed with the National Board of Boiler and Pressure Vessel Inspectors or the Office of Boiler and Pressure Vessel Compliance if the boiler is not registered with the National Board. **Fees for registration of these reports shall be $2.00 for each boiler and shall be forwarded to the Office of Boiler and Pressure Vessel Compliance for registration.**

1. When registered, one copy of the manufacturer's data report shall be returned to the user of the boiler.

2. If reports are not filed, the boiler shall be subject to State inspection and State inspection fees shall be assessed.

12:90-4.9 Qualification of authorized repair firms

(a) This section shall apply to the procedures required to obtain a New Jersey R symbol as a New Jersey authorized **welded** repair firm **for welded repairs**.

(b) A letter of application shall be addressed to the Office of Boiler and Pressure Vessel Compliance by a responsible officer of the firm requesting **welded** repair authorization. The letter of application shall identify the New Jersey address and location of the **welded** repair firm to be considered for authorization, and shall include evidence that an authorized inspection agency has agreed to provide inspection service as required.

(c) A review of the firm's facilities and quality control system shall be conducted jointly by an inspection specialist of the Office of Boiler and Pressure Vessel Compliance and a **supervisory** representative of the authorized inspection agency. The assigned shop inspector shall **also** be present during the review.

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

(f) [Repairs] **Welded repairs** performed by an authorized **welded** repair firm shall be deemed to preserve intact the validity of the original construction standard of the boiler upon which the work was performed while the boiler is in the State **of New Jersey.**

(g) Alerations or modifications altering the original design shall **not be performed by the holder of a New Jersey repair certification, but shall** be performed by an appropriate, qualified, ASME symbol **stamp or National Board Alteration Certificate of Authorization** holder.

[(h) Repair firms may add nozzles no larger than an unreinforced nozzle size.]

[(i)]**(h)** [Repair] **Welded repair** shops shall be located within jurisdictional New Jersey.

[(j)]**(i)** Nothing herein shall be intended to prohibit **welded** repair by an appropriate, qualified, ASME authorized shop or National Board **welded** repair firm or to require additional qualification of such shops under these rules.

12:90-4.10 Inspection of boilers

(a) All steam or hot water boilers or similar equipment potentially capable of generating steam as described in (b) below shall be inspected and be subjected to a hydrostatic test, if necessary, at least once each year at 12-month intervals. This inspection shall be a complete internal and external inspection as construction conditions will permit. **All hot water heating boilers shall be inspected internally at 24-month intervals and shall be inspected externally every 12 months.**

(b)-(f) (No change.)

12:90-4.12 Fee **and visit charge** for shop inspection

[(a) A fee of $18.00 shall be charged for each boiler inspected in the shop of the manufacturer of the boiler.

(b) The minimum fee shall be $120.00 for any shop inspection that is four hours or less.

(c) The minimum fee shall be $225.00 for any shop inspection exceeding four hours.]

(a) The fee for a shop inspection shall be the higher of either (a)1 or 2 below:

1. A fee of $25.00 for each boiler inspected; or

2. A daily visit charge of $160.00 for any shop inspection of four hours or less and $300.00 for any shop inspection exceeding four hours.

[(d)]**(b)** In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of the inspection.

12:90-5.2 Compliance with referenced standards

(a) (No change.)

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code—[1989] **1992 edition with addenda** are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1.-7. (No change.)

(c) The National Board Inspection Code—[1987] **1989** is adopted as a safety standard under this subchapter and shall apply according to the provisions thereof, except that the following sections shall not apply:

1.-2. (No change.)

(d) Each person engaged in the **design,** construction, **fabrication, installation,** repair or alteration of unfired pressure vessels shall protect the public by complying with the standards prescribed in (b) and (c) above.

(e)-(g) (No change.)

12:90-5.4 Class I unfired pressure vessels

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

(d) Class I unfired pressure vessels [may] **shall** also be stamped and registered [as designated by] **with** the National Board **except as stipulated in N.J.A.C. 12:90-5.13(d).**

12:90-5.9 Class III unfired pressure vessels—New Jersey Approved

(a) (No change.)

(b) The application for a New Jersey Approved unfired pressure vessel shall meet the following requirements:

1.-3. (No change.)

4. All letters of application shall be accompanied by payment of [$1000] **$1,500** for each non-code design. Additional fees shall be required for designs submitted for a single project and shall be repetitive for each user-application of the design;

5. Following final inspection and test, the manufacturer shall complete an appropriate manufacturers' data report form. This form shall be certified by the New Jersey authorized inspector who will identify his New Jersey [certified] **Certificate of Competency license** number; and

6. (No change.)

(c)-(g) (No change.)

(h) Full computations shall be provided, using appropriate formulae as required, by the applicable code section. All computations shall be labeled and ASME Code reference given. Where ASME Code formulae do not apply, the rationale of alternate methods of computation shall be clearly demonstrated. **Finite Element Analysis is an acceptable alternative method to demonstrate design rationale.**

(i)-(k) (No change.)

(l) All of the foregoing [material] **documentation** shall be forwarded to the Office of Boiler and Pressure Vessel Compliance by the user of the vessel with a letter requesting that New Jersey Approved classification be assigned, if warranted.

(m) (No change.)

12:90-5.12 Welded repairs and alterations to unfired pressure vessels

(a) Welded repairs and alterations to unfired pressure vessels shall comply with:

1.-2. (No change.)

3. The National Board Inspection Code—[1987] **1989** edition.

(b) (No change.)

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(c) A record of [major] welded repairs shall be filed with the Office of Boiler and Pressure Vessel Compliance **when requested**.

(d) Alterations to unfired pressure vessels shall be performed by the appropriate Code symbol holder [only] **and/or National Board Alteration Certificate Holder.**.

(e) An alteration report and a copy of the original manufacturer's data report shall be filed with the National Board of Boiler and Pressure Vessel Inspectors or the Office of Boiler and Pressure Vessel Compliance if the unfired pressure vessel is not registered with the National Board. **The fees for registration shall be in accordance with N.J.A.C. 12:90-5.15(d).**

12:90-5.14 Fee **and visit charge** for shop inspection

[(a) A fee of $18.00 shall be charged for each unfired pressure vessel inspected in the shop of the manufacturer of the unfired pressure vesel.

(b) The minimum fee shall be $120.00 for any shop inspection that is four hours or less.

(c) The minimum fee shall be $225.00 for any shop inspection exceeding four hours.]

(a) The fee for a shop inspection shall be the higher of either 1 or 2 below:

1. A fee of $25.00 for each boiler inspected; or

2. A daily visit charge of $160.00 for any shop inspection of four hours or less, and $300.00 for any shop inspection exceeding four hours.

[(d)]**(b)** In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of the inspection.

12:90-7.18 Suspension or revocation of license

(a)-(e) (No change.)

(f) A licensee whose license is suspended or revoked has the right to request a hearing conducted in accordance with N.J.S.A. 34:7-3.

12:90-7.20 Employment of unlicensed person **in emergency**

(a) (No change.)

(b) [Continuation requests for emergency operating permission must be received in the Office of Boiler and Pressure Vessel Compliance prior to the expiration date of the granted permission.] **The Commissioner may extend the time period under (a) above provided that a written extension request is received by the Office of Boiler and Pressure Vessel Compliance prior to the expiration of the 15 day period in (a) above. Such request shall contain:**

1. The reason for the emergency condition;

2. A date certain when a licensed person will be employed;

3. The method used and efforts made in searching for a licensed person;

4. The name of the unlicensed person currently employed and if the unlicensed person has made an application for examination with the Office of Boiler and Pressure Vessel Compliance; and

5. Such other information as the Commissioner shall direct.

(c) Late requests for [continuation] **extension** are subject to penalties which must be satisfied prior to permission being granted.

(d) If an unlicensed person in (b)4 above who has filed an application with the Office of Boiler and Pressure Vessel Compliance fails to appear for an examination as notified or a licensed person is not hired within the extension period set by the Commissioner, the Commissioner may at his or her discretion refer a licensed person from an employment agency or other appropriate source to the employer.

[(d)]**(e)** The Office of Boiler and Pressure Vessel Compliance shall again be notified when a licensed person is employed, giving the name, address, and license classification, grade and number of such employee.

12:90-8.1 Documents referred to by reference

(a) The full title and edition of each of the standards and publications referred to in this chapter are as follows:

1. ASME—[1989] **1992 edition and addenda**, Boiler and Pressure Vessel Code

Section I, Power Boilers

Section II, Material[s] **Specifications**

Part A—Ferrous Material[s] **Specifications**

Part B—Nonferrous Material[s] **Specifications**

Part C—**Specifications for** Welding Rods, Electrodes and Filler Metals

Part D—Properties

Section III, Nuclear Power Plant Components

Subsection NCA—General Requirements for Division 1 and Division 2

Division 1—Subsection NB—Class 1 Components

Division 1—Subsection NC—Class 2 Components

Division 1—Subsection ND—Class 3 Components

Division 1—Subsection NE—Class MC Components

Division 1—Subsection NF—Component Supports

Division 1—Subsection NG—Core Support Structures

Division 1—Appendices

Division 2—Code for Concrete Reactor Vessels and Containments

Section IV, Heating Boilers

Section V, Nondesctructive Examination

Section VI, Recommended Rules for **the** Care and Operation of Heating Boilers

Section VII, Recommended [Rules] **Guidelines** for **the** Care of Power Boilers

Section VIII, Pressure Vessels

Division 1

Division 2—Alternative Rules

Section IX, Welding and Brazing Qualifications

Section X, [Fiberglass] **Fiber**-Reinforced Plastic Pressure Vessels

Section XI, Rules for Inservice Inspection of Nuclear Power Plant Components—Division I

All Cases, Interpretations and Addenda

2. BOCA—1987, Basic National Mechanical Code.

3. NBBPVI—[1987] **1989**, National Board Inspection Code.

4. N.J.S.A. 34:7-1 et seq., Operating Engineers and Firemen Licensing Act.

5. N.J.S.A. 34:7-14 et seq., Boiler, Pressure Vessel and Refrigeration Act.

6. New Jersey Uniform Construction Code, N.J.A.C. 5:23-3.20, Mechanical Subcode.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BUREAU OF SECURITIES

Rules of Practice

Proposed New Rules: N.J.A.C. 13:47A-1.10A, 2.6A, 13 and 14

Authorized By: A. Jared Silverman, Chief, Bureau of Securities.

Authority: N.J.S.A. 49:3-67(a).

Proposal Number: PRN 1994-513.

Submit written comments by October 19, 1994 to:

A. Jared Silverman, Chief
Bureau of Securities
P.O. Box 47029
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Bureau of Securities proposes these new rules under P.L. 1967, c.93, N.J.S.A 49:3-47 through 76 (the "Uniform Securities Law (1967)" or the "Law") to codify existing Bureau procedure with respect to administrative cases in the "pre-contested" stages. Once a case is contested, the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the rules promulgated thereunder, N.J.A.C. 1:1, are invoked.

These rules should have a positive impact on both the securities industry and securities bar. The rules will give notice to both the industry and the bar as to the Bureau's procedures in "pre-contested" cases. At the same time, these rules will have a significant impact upon the Bureau and upon its ability to regulate the securities industry, because the

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proposed rules clearly set forth the Bureau Rules of Practice. This should lessen controversy and litigation over the Bureau's administrative practice.

This proposal has been discussed with the Securities Advisory Committee, an informal body created to advise the Bureau of Securities on statutory, regulatory and policy matters. Members of the Committee have commented on drafts of this proposal. Those comments were considered when preparing the instant proposal.

The proposed new rules consist of 34 sections divided into two subchapters (N.J.A.C. 13:47A-13 and 14), as well as two new sections, N.J.A.C. 13:47A-1.10A and 2.6A that supplement existing rules, N.J.A.C. 13:47A-1.10 and 2.6.

Proposed N.J.A.C. 13:47A-13.1 provides that the rules are generally applicable to proceedings before the Bureau. The requirements for contested cases are set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the regulations promulgated thereunder, N.J.A.C. 1:1. Proposed N.J.A.C. 13:47A-13.1 also states that only the group of regulations in subchapter 14, N.J.A.C. 13:47A-14, apply to Bureau investigations.

Proposed N.J.A.C. 13:47A-13.2 states the office and mailing addresses of the Bureau, the Bureau hours and legal holidays.

Proposed N.J.A.C. 13:47A-13.3 allows for appearance before the Bureau by a non-lawyer in the case of an individual; on behalf of the State of New Jersey or its departments, agencies or political subdivisions, if certain preconditions are met; and by a sole proprietorship business. Businesses other than a sole proprietorship must be represented by an attorney. A third party may not be represented by a suspended or disbarred attorney.

Proposed N.J.A.C. 13:47A-13.4 allows for representation of a person by an attorney at law admitted to practice in New Jersey.

Proposed N.J.A.C. 13:47A-13.5 provides for representation of a person before the Bureau, at the discretion of the Bureau Chief, by an attorney in good standing in any other jurisdiction, provided a written application is submitted to and approved by the Bureau Chief prior to any scheduled appearance. The proposed rule sets forth the factors that limit admission of out-of-state attorneys before the Bureau. The rule also provides that at any time during the proceeding, for good cause, the Bureau Chief may revoke permission for out-of-state counsel to appear before the Bureau. Good cause includes, but is not limited to, conflicts of interest, dilatory or obstructionist behavior of counsel during a Bureau investigation, and refusal by counsel to accept service of process.

Proposed N.J.A.C. 13:47A-13.6(a) provides for notice of appearance by an applicant or registrant appearing before the Bureau on his or her own behalf. The notice shall include the address and telephone number of the applicant or registrant. If the address or telephone number changes before the conclusion of the matter, the applicant or registrant shall have 10 days to notify the Bureau in writing of the change.

Proposed N.J.A.C. 13:47A-13.6(b) provides for written notice of appearance for an attorney appearing before the Bureau and sets forth the filing requirements. This rule requires written notice to the Bureau within 10 days of a change in either the attorney's or client's address or telephone. If an attorney withdraws or otherwise ceases to represent a client before the Bureau, the attorney shall immediately notify the Bureau in writing. The substituting attorney shall then immediately file a notice of appearance.

Proposed N.J.A.C. 13:47A-13.6(c) provides that any person appearing or practicing before the Bureau in a representative capacity shall file a written appearance with the Bureau, including authority to act in such capacity.

Proposed N.J.A.C. 13:47A-13.6(d) provides that any person appearing before the Bureau on behalf of a witness or respondent shall disclose in writing whether he or she currently represents or within the preceding 18 months has represented any other party in connection with any matter before the Bureau. If so, the person appearing shall name such other parties and shall certify that he or she has considered the effect of all relevant Rules of Professional Conduct upon such multiple representation and has determined that no conflict of interest exists or has made full disclosure of the circumstances of the conflict to each client, has obtained each client's consent to the continued representation, and has determined that he or she has a reasonable belief that no representation of any client will be adversely affected by such continued representation.

Proposed N.J.A.C. 13:47A-13.6(e) provides that any attorney appearing or practicing before the Bureau on behalf of a witness or respondent shall disclose in writing whether he or she is being compensated for said representation by a person or party other than the person or party being represented. If so, the attorney must disclose the name and address of the person providing the compensation and provide the Bureau written consent to such third party compensation from the person or party represented.

Proposed N.J.A.C. 13:47A-13.7 through 13.10 set forth the requirements for service of process upon the Bureau, other persons, attorneys and registrants. Proposed N.J.A.C. 13:47A-13.7 provides that service upon the Bureau shall be in accordance with N.J. Court Rule 4:4-4(f).

Proposed N.J.A.C. 13:47A-13.8 provides that service upon other persons shall be personally, by certified mail or by ordinary mail; or in any manner designed to provide actual service. Service by mail shall be complete upon mailing.

Proposed N.J.A.C. 13:47A-13.9 provides for service upon attorneys.

Proposed N.J.A.C. 13:47A-13.10 provides that persons registered with the Bureau, including issuers who have offered or sold securities pursuant to an exemption from registration, shall be subject to personal service inside or outside of New Jersey, as in any manner described in proposed N.J.A.C. 13:47A-13.8 and 13.9. If a registered person conducts business in New Jersey through one or more branch offices in New Jersey, service upon a responsible party at any such branch office shall be considered effective service upon the registered person. Responsible parties are also defined.

Proposed N.J.A.C. 13:47A-13.11 through 13.15 set forth the requirements for filing an Answer to a Bureau Complaint or Order. Proposed N.J.A.C. 13:47A-13.11 sets forth when an Answer is required.

Proposed N.J.A.C. 13:47A-13.12 sets forth the time to file the Answer.

Proposed N.J.A.C. 13:47A-13.13 sets forth the effect of a failure to deny an allegation.

Proposed N.J.A.C. 13:47A-13.14 sets forth the effect of failure to Answer entirely.

Proposed N.J.A.C. 13:47A-13.15 sets forth the requirement and effect of a signature on the Answer.

Proposed N.J.A.C. 13:47A-13.16 provides that settlement proposals and requests for settlement conferences may be made at any time during the proceeding.

Proposed N.J.A.C. 13:47A-13.17 states that by making a written settlement proposal or requesting a settlement conference, the parties agree to waive any claim of prejudgment concerning the Bureau chief's participation in the settlement discussions.

Proposed N.J.A.C. 13:47A-13.18 deals with rejection or acceptance of a settlement offer by the Bureau Chief.

Proposed N.J.A.C. 13:47A-14.1 provides that the regulations in N.J.A.C. 13:47A-14 apply only to private investigations conducted by the Bureau pursuant to N.J.S.A. 49:3-68.

Proposed N.J.A.C. 13:47A-14.2 concerns the confidentiality of information or documents obtained by the Bureau during the course of a private investigation, and the disclosure of that information or those documents to other governmental, regulatory or law enforcement agencies, special counsels, bankruptcy trustees or by court order. This rule also allows the Bureau to disclose information and documents obtained in private investigations, under certain circumstances. The Bureau may, to the extent necessary, disclose such information and documents, in court proceedings; to witnesses and potential witnesses; or when otherwise appropriate in any investigation or proceeding.

Proposed N.J.A.C. 13:47A-14.3 provides that proposed N.J.A.C. 13:47A-14.3 through 14.10 shall be applicable to a person who appears as a witness before the Bureau, whether voluntarily or in response to a subpoena or administrative order. This rule also defines "witness," "investigative proceeding" and "officer conducting the investigation."

Proposed N.J.A.C. 13:47A-14.4 provides that at any Bureau investigative proceeding, the transcript shall be recorded solely by the official reporter or other person or means designated by the officer conducting the investigation. The transcript shall be the sole official record of the proceeding and be the property of the Bureau. Any other contemporaneous, verbatim transcription or recording of the proceeding shall be prohibited.

Proposed N.J.A.C. 13:47A-14.5 provides for inspection of a transcript by a witness or the witness's attorney, at the Bureau during normal business hours after reasonable notice to the Bureau. Neither counsel, nor the witness may remove or copy the transcript.

Proposed N.J.A.C. 13:47A-14.6 allows for procurement of a copy of documentary evidence submitted to the Bureau, unless the request is unduly burdensome.

Proposed N.J.A.C. 13:47A-14.7 concerns representation of more than one person by counsel. This rule requires written disclosures by counsel

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to his or her clients concerning potential or actual conflicts of interest in counsel's representation of more than one client. Counsel must provide the Bureau and each of counsel's clients with a written list of all persons or parties currently represented before the Bureau or represented before the Bureau within the past 18 months, and written consent to multiple representation by counsel for each witness represented by counsel.

The consent shall show that counsel has provided full disclosure of the implications of multiple representation to each of counsel's clients. Prior to a witness giving testimony, counsel shall identify for the record all such persons or parties represented by counsel. The requirements of this regulation are triggered upon retention as counsel by the second person in any proceeding. The disclosures are required each time counsel is retained or relieved as counsel by a witness.

Proposed N.J.A.C. 13:47A-14.8 places the burden upon the witness or counsel for having counsel for the witness present at a Bureau proceeding, and not upon the Bureau. Where no timely prior request for adjournment was made, or where the request was denied for good cause, counsel's absence at the designated time and place for the witness's testimony shall not be cause for the failure of the witness to appear or to answer the questions of the Bureau officer conducting the examination.

Proposed N.J.A.C. 13:47A-14.9 provides for sequestration of witnesses.

Proposed N.J.A.C. 13:47A-14.10 reserves the statutory power to immunize witnesses to the Bureau Chief, with oversight by the Attorney General.

Proposed N.J.A.C. 13:47A-14.11 provides for service of subpoenas in the same manner as for other process under N.J.A.C. 13:47A-13.7 through 13.10.

Proposed N.J.A.C. 13:47A-14.12 provides for immediate access during regular business hours to a registrant's premises for a Bureau inspection of a registrant's documents (that is, books and records).

Proposed N.J.A.C. 13:47A-14.13 provides that Bureau staff shall have the opportunity to observe the conduct of a registrant's business at the registrant's place of business.

Proposed N.J.A.C. 13:47A-14.14 provides for immediate Bureau access to all documents and records required by law to be kept by a registrant and that Bureau staff shall be entitled to examine and photocopy all of the records and documents without interference.

Proposed N.J.A.C. 13:47A-14.15 provides that the Bureau staff shall have the opportunity to interview any person or persons on the premises, that any objections to the interview must come from the person(s) whose interview is sought, and that the interview may be conducted at the registrant's place of business in private, or at the Bureau.

Proposed N.J.A.C. 13:47A-14.16 provides that willful failure to cooperate with a Bureau investigation may be deemed by the Bureau to be a violation of N.J.S.A. 49:3-58(a)(2)(ii), and subject the registrant to denial, suspension or revocation of its registration. Proposed N.J.A.C. 13:47A-14.16 lists types of conduct that may be deemed a failure to cooperate, including failure to appear or produce documents in response to a Bureau subpoena or order; failure to answer any question pursuant to a private investigation under N.J.S.A. 49:3-68 or other applicable law; failure to provide Bureau access to records and documents; failure to attend any scheduled Bureau proceeding; failure to respond to a demand under N.J.S.A. 49:3-68 or any other law; and aiding or abetting another person's failure to cooperate.

Proposed N.J.A.C. 13:47A-1.10A provides that all broker-dealers shall keep on file in every branch and sales office, copies of any prospectus, circular, form letter, advertisement, sales script and prepared text used to solicit prospective investors; any other material intended for distribution or communication to prospective investors by mail, telephone or other medium; and any materials used for training sales persons.

Proposed N.J.A.C. 13:47A-2.6A provides the same requirements as proposed N.J.A.C. 13:47A-1.10A, except applied to investment advisors rather than broker-dealers.

Social Impact

The social impact of these proposed new rules is that the public, the securities industry and the securities bar will be charged with notice of Bureau administrative practice. This "notice" should reduce uncertainty and transaction costs and expedite matters before the Bureau.

Economic Impact

The economic impact of these proposed new rules will be that publishing the Bureau's administrative practice will lessen the probability of litigation. This will reduce costs to the securities industry, securities bar, investors and the Bureau. The public will benefit from a more responsive Bureau because another administrative burden on the Bureau will have been removed by these regulations.

Substantively, broker-dealers and investment advisors will incur the costs of the required maintenance of sales and advertising material. Participants in proceedings before the Bureau shall incur the minor administrative costs inherent in the preparation, filing and, if necessary, service of the various documents required under the rules. If legal representation is desired, or required, in Bureau proceedings or investigations, the cost will be borne by the person represented. These rules, as implemented by the Bureau, serve to promote an efficient and fair enforcement system.

The Bureau's ability to regulate the industry and detect fraud should be enhanced in that certain of the Bureau's statutory powers will no longer be contested by respondents before the Bureau.

Regulatory Flexibility Analysis

These proposed new rules are an attempt to decrease the burden of uncertainty on the industry in general and on small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The additional reporting requirements entailed by the Notice of Appearance should be minimal. The Bureau expects no more than 50 one-page filings per year on average. The requirement that broker-dealers and investment advisors retain investor solicitation materials will not require the broker-dealers and investment advisors to create or catalog any documents, but simply to retain and not destroy documents already in existence. Regulatory oversight of the securities industry will also be greatly enhanced, outweighing the inconvenience to the regulated community.

These new rules impose reporting requirements on attorneys or persons appearing before the Bureau. As noted above, N.J.A.C. 13:47A-13.6(b) requires an attorney or person appearing before the Bureau to file a Notice of Appearance. The Notice of Appearance is a one page form that sets forth the name, address and telephone number of the attorney and the client. N.J.A.C. 13:47A-13.6(b) also requires the attorney and the client to notify the Bureau in writing within 10 days of a change in the address or telephone number of the attorney or client.

N.J.A.C. 13:47A-13.6(d) and 14.7 require an attorney to make disclosures to his or her clients and the Bureau concerning multiple representation. N.J.A.C. 13:47A-13.6(d) is a general regulation. N.J.A.C. 13:47A-14.7 is a regulation that is triggered during a Bureau investigation. The disclosures by the attorney must include a list of all clients represented before the Bureau currently and within the past 18 months, and a certification that no conflict of interest exists; or a certification that full disclosure of the circumstances has been made to each client, the client has consented to the multiple representation and the attorney reasonably believes that the multiple representation will not adversely affect any of the clients.

Full text of the proposed new rules follows:

13:47A-1.10A Maintenance of sales and advertising material (broker-dealers)

All broker-dealers shall keep on file, in every branch and sales office, copies of any prospectus, circular, form letter, advertisement, sales script, prepared text intended for use in that branch or sales office in the course of soliciting prospective investors, and any other sales or advertising material intended for distribution or communication to prospective investors by mail, telephone or any other medium, or for the use or training of persons making such communications.

13:47A-2.6A Maintenance of sales and advertising material (investment advisors)

All investment advisors shall keep on file, in every branch and sales office, copies of any prospectus, circular, form letter, advertisement, sales script, prepared text intended for use in the course of soliciting prospective investors, and any other sales or advertising material intended for distribution or communication to prospective investors by mail, telephone or any other medium, or for the use or training of persons making such communications.

SUBCHAPTER 13. GENERAL RULES OF PRACTICE

13:47A-13.1 Scope of Rules of Practice

These Rules of Practice are generally applicable to proceedings before the Bureau under the Uniform Securities Law (1967), N.J.S.A. 49:3-47 et seq., as amended, prior to a matter having been

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determined to be a contested case. In connection with contested cases, reference should be made to any procedural requirements that may be contained in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or the regulations and forms adopted thereunder, which requirements are controlling. These Rules of Practice do not apply to investigations, except where specifically made applicable by N.J.A.C. 13:47A-14, Rules of Practice Relating to Investigations.

13:47A-13.2 Bureau address and business hours

The office of the Bureau, at 153 Halsey Street, Newark, New Jersey 07102; mailing address, P.O. Box 47029, Newark, New Jersey 07101, is open each day, except Saturdays, Sundays and legal holidays, from 9:00 A.M. to 5:00 P.M., Eastern Standard Time or Eastern Daylight Time, whichever is currently in effect in New Jersey. Legal holidays consist of New Year's Day; Martin Luther King Jr.'s Birthday; Lincoln's Birthday; Washington's Birthday; Good Friday; Memorial Day; Independence Day; Labor Day; Columbus Day; Election Day; Veterans Day; Thanksgiving Day; Christmas Day; and any other day appointed as a holiday or day off in New Jersey by the Governor or Legislature of New Jersey.

13:47A-13.3 Appearance and practice before the Bureau by non-lawyers

Except as required by the New Jersey Court Rules, an individual may appear in his or her own behalf and, where authorized by law and with the consent of the Attorney General, an officer or employee of a department, agency or political subdivision of the State may appear on behalf of the department, agency or political subdivision of the State. A business entity other than a sole proprietor must be represented by an attorney. No representation of a third party before the Bureau shall be undertaken by any suspended or disbarred attorney.

13:47A-13.4 Appearance and practice before the Bureau; by lawyers

A person may be represented in any proceeding by an attorney at law admitted to practice before the Supreme Court of the State of New Jersey.

13:47A-13.5 Appearance and practice before the Bureau by out-of-State counsel

(a) Upon written application within a reasonable time prior to any scheduled appearance before the Bureau, and at the discretion of the Bureau Chief, a person may be represented by an attorney in good standing in any other jurisdiction.

(b) The Bureau Chief shall allow out-of-State counsel to appear before the Bureau only upon a finding that:

1. There has been an attorney-client relationship with the client for an extended period of time; or

2. There is a lack of local counsel with adequate expertise in securities law, or

3. The issues likely to be raised involve the law of the foreign jurisdiction in which the out-of-State counsel is admitted; or

4. There is a need for extensive proceedings in the foreign jurisdiction in which the out-of-State counsel is licensed; or

5. There exists another similar, equally compelling reason; and

6. Out-of-State counsel has fully complied with the requirements of N.J.A.C. 13:47A-13.3, 13.5 and 13.6.

(c) The Bureau Chief may, at any time during the proceeding and for good cause, revoke permission for out-of-State counsel to appear before the Bureau. Good cause shall include, but not be limited to, conflicts of interest (for example, counsel is a witness in the case), dilatory or obstructionist behavior by counsel during a Bureau investigation, and refusal by counsel to accept service of process.

13:47A-13.6 Notice of appearance; designation for service; power of attorney; conflicts of interest

(a) An applicant or registrant appearing on his or her own behalf before the Bureau shall file with the Bureau or otherwise state on the record an address at which any notice or other written communication required to be served upon or furnished to the applicant or registrant may be sent, and a telephone number at which the applicant or registrant can be reached during the business day. If the individual's address or telephone number changes before the conclusion of the matter in which the individual appeared, the individual shall notify the Bureau in writing no later than 10 days following the change.

(b) When an attorney appears before the Bureau or a hearing officer in a representative capacity in a particular proceeding which involves a hearing or an opportunity for a hearing, the attorney shall enter a written appearance with the Bureau which shall state the attorney's name, firm, address and telephone number and the name and address of the person or persons on whose behalf the attorney appears. If the address or telephone number of the attorney or the person represented changes during the course of representation before the Bureau, the attorney shall notify the Bureau in writing no later than 10 days following the change(s). If an attorney withdraws, or is otherwise relieved, from representing a person in a matter in which the attorney has entered an appearance, the attorney shall notify the Bureau in writing immediately. If an attorney is substituted for, or otherwise relieves, another attorney who has entered an appearance, the new attorney shall immediately enter a written appearance with the Bureau as prescribed in this subsection.

(c) Any person, other than an attorney, appearing or practicing before the Bureau in a representative capacity shall file a written appearance with the Bureau including authority to act in such capacity.

(d) Any attorney appearing or practicing before the Bureau on behalf of a witness as defined by N.J.A.C. 13:47A-14.7 through 14.10, inclusive, or for a respondent in a proceeding before the Bureau, shall disclose in writing whether he or she currently is representing or in the preceding 18 month period has represented any other party before the Bureau and, if so, shall name such other parties and shall certify that he or she has considered the effect of all relevant Rules of Professional Conduct upon such multiple representaton and has either:

1. Determined that no conflict of interest exists; or

2. Made full disclosure of the circumstances of the conflict to each client, has obtained each client's consent to the continued representation, and has determined that he or she has a reasonable belief that no representation of any client will be adversely affected by such continued representation.

(e) Any attorney appearing or practicing before the Bureau on behalf of a witness as defined by N.J.A.C.13:47A-14.7 through 14.10, inclusive, or for a respondent in a proceeding before the Bureau, shall disclose in writing whether he or she is being compensated for said person's representation by a person or party other than the person or party represented, and, if so, the name and address of the person providing such compensation and written consent, from the person or party represented, to such third-party compensation.

13:47A-13.7 Service upon the Bureau

Service upon the Bureau shall be made in accordance with New Jersey Court Rule 4:4-4(f).

13:47A-13.8 Service upon persons not represented by counsel

Service upon persons not represented by counsel in matters before the Bureau shall be made in person; or by certified mail, return receipt requested; or by ordinary mail; or in any manner which is designed to provide actual notice to the party or person being served. Service by mail shall be complete upon mailing.

13:47A-13.9 Service upon attorneys

In any proceeding or matter where an attorney has filed an appearance pursuant to N.J.A.C. 13:47A-13.5 and 13.6, any subpoena, complaint, summons, order, notice or other written communication to be served upon or furnished to the person represented by the attorney shall be served upon the attorney (or one of such attorneys, if the clent is represented by more than one attorney). Such service shall be made in the same manner as set forth in N.J.A.C. 13:47A-13.8 for the person represented, and shall be deemed sufficient service regardless of whether such communication is furnished directly to the person represented.

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13:47A-13.10 Service upon registered persons

A person registered with the Bureau in any capacity shall be subject to personal service inside or outside of New Jersey in any manner described in N.J.A.C. 13:47A-13.8 and 13.9. An issuer whose securities are either offered or sold in, into or from New Jersey pursuant to an exemption from registration under N.J.S.A. 49:3-50 or 49:3-60, shall be considered registered with the Bureau under these regulations. If a registered person, as defined in N.J.S.A. 49:3-49, conducts business in New Jersey through one or more branch offices in New Jersey, service upon a responsible party at any such branch office shall be considered effective service upon the registered person. Officers, directors, principals, partners and supervisory personnel of a registered person, as well as any employees of a registered person with apparent authority to receive communications from the public, shall be deemed responsible parties for purposes of this section.

13:47A-13.11 Answers; when required

When a complaint for an order containing allegations is issued by the Bureau, each party respondent shall file an answer to the complaint or the allegations in the order.

13:47A-13.12 Time to file answer

Except where a different period is provided by statute, regulation or order, a party respondent shall file an answer within 20 days after service of the complaint or order.

13:47A-13.13 Requirements of answer; effect of failure to deny

Unless otherwise directed by the Bureau, an answer filed pursuant to statute or this subchapter shall specifically admit, deny, or state that the party does not have and is unable to obtain sufficient information to admit or deny, each and every paragraph in the complaint or each and every allegation in the order filed by the Bureau. A statement of a lack of information shall have the effect of a denial. Any paragraph or allegation not denied shall be deemed admitted. When a party intends in good faith to deny only a part of a paragraph or allegation, the party shall specify so much of it as is true and shall deny only the remainder. An answer filed pursuant to this statute or this subchapter shall set forth specifically and separately a statement of facts constituting any affirmative defense or defenses.

13:47A-13.14 Effect of failure to file answer

If a party fails to file an answer required by statute or this subchapter within the time provided, such person shall be deemed in default and the proceeding may be determined against him by the Bureau upon consideration of the complaint or order, the contents of which may be deemed to be true.

13:47A-13.15 Signature on answer; requirement and effect

Every answer shall be signed by the party filing it or by at least one attorney, in his or her individual name and, where applicable, the name of the firm, who represents such party. The signature constitutes a verification by the signer that the signer has read the answer; that to the best of the signer's knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

13:47A-13.16 Offers of settlement

Parties may, at any time, make written settlement proposal to, or may request settlement conferences with, the Bureau Chief or the Chief's designee where time, the nature of the proceeding, and the public interest permit.

13:47A-13.17 Agreement of parties to participation of Bureau Chief in settlement discussions

By making a written settlement proposal or requesting a settlement conference, the parties agree that the Bureau Chief or the Chief's designee may express the Chief's views regarding the appropriateness of any offer of settlement, and may otherwise participate in settlement negotiations, without such views or participation giving rise to claims of prejudgment on the part of the Bureau Chief or the Chief's designee. In any event, the Bureau Chief or the Chief's designee, in his or her discretion, may decline to express any view on an offer.

13:47A-13.18 Rejection or acceptance of offer of settlement

An offer of settlement shall be accepted or rejected by the Bureau Chief as permitted by statute. Where the Bureau Chief rejects an offer of settlement, the party making the offer shall be notified of the rejection and the offer of settlement shall be deemed withdrawn. Such offer and any documents relating to rejected settlement offers shall not constitute a part of the record. All terms of an accepted settlement offer shall be contained in a public order issued by the Bureau Chief in the proceedings.

SUBCHAPTER 14. RULES OF PRACTICE RELATING TO INVESTIGATIONS

13:47A-14.1 Scope of rules relating to investigations

N.J.A.C.13:47A-14.1 through 14.16, inclusive, apply only to private investigations conducted by the Bureau pursuant to N.J.S.A. 49:3-68. They do not apply to adjudicative or rulemaking proceedings.

13:47A-14.2 Information obtained during the course of private investigations

Information or documents obtained by the Bureau in the course of any private investigation, unless such information or documents are published by the Bureau pursuant to its authority under N.J.S.A. 49:3-68(a), shall be deemed non-public. Such information and documents may be disclosed to representatives of domestic or foreign governmental authorities, self-regulatory agencies, state or federal law enforcement officers, state securities law administrators, special counsels and other similar persons appointed in Bureau litigation, and trustees in bankruptcy. Futhermore, the Bureau may also, to the extent necessary, disclose such information and documents in court proceedings; to witnesses and potential witnesses; when otherwise appropriate in any investigation or proceeding; or when ordered to do so by a court of competent jurisdiction.

13:47A-14.3 Applicability of N.J.A.C. 13:47A-14.3 through 14.10

N.J.A.C. 13:47A-14.3 through 14.10 shall be applicable to a person who appears either voluntarily, pursuant to an administrative investigative subpoena or administrative order, or at the request of, or with the permission of, the Bureau. Such person, being sworn in an investigation or examination, shall be referred to as a "witness." Such investigation or examination, hereinafter be referred to as an "investigative proceeding," shall be conducted by the Bureau before one or more of its employees, or before any officer designated by it for the purpose of taking testimony of witnesses and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

13:47A-14.4 Official transcript

Transcripts, if any, of investigative proceedings shall be recorded solely by the official reporter or by any other person or means designated by the officer conducting the investigation. There shall be one official transcript of a witness' testimony, which shall be the property of the Bureau. Except as provided by N.J.A.C. 13:47A-14.5, any other contemporaneous, verbatim transcription by writing or recording, in any form and in any media, shall be prohibited.

13:47A-14.5 Access to transcripts

Any witness, and counsel, upon proper identification and after giving reasonable prior notice, shall have the right to inspect the official transcript of the witness' own testimony at the Bureau's offices during normal business hours; but neither the witness, nor counsel for the witness, shall have the right to remove, copy or order a copy of the official transcript without authorization by the Bureau Chief.

13:47A-14.6 Access to documentary evidence

A person who has submitted documentary evidence in an investigative proceeding shall be entitled, upon written request, to procure a copy of submitted documentary evidence on payment based upon the fee schedule set forth in N.J.S.A. 47:1A-2; provided, however, that such request not prove unduly burdensome.

13:47A-14.7 Witnesses; representation by counsel

A witness may be accompanied, represented and advised by counsel, as defined in N.J.A.C. 13:47A-13.4 and 13.5. Where counsel for

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a witness currently is representing or in the preceding 18 month period has represented any other party before the Bureau, counsel shall disclose to each witness the names of other persons or parties whom counsel represents and shall provide the Bureau with a written list of all persons or parties so represented. Counsel shall also provide the Bureau with written consent to multiple representation by each witness represented by counsel in the matter under investigation. The consent shall evidence that counsel, in consultation with each client, has provided full disclosure of the implications of such multiple representation. Prior to a witness giving testimony, counsel shall identify for the record all such persons or parties represented by counsel. The foregoing obligation of counsel shall commence with counsel's retention by a second person or party and the required notifications shall be made each time counsel is either retained or relieved as counsel by a witness.

13:47A-14.8 Witnesses; representation of counsel defined

Counsel may advise witnesses before, during and after the conclusion of testimony given in the course of an investigative proceeding, and may make summary notes during such testimony solely for use in the representation of the witness. The witness is responsible for having counsel present at the time and place designated by the officer conducting the investigation. Where no timely prior request for adjournment was made, or where such request was denied for good cause, counsel's absence at the designated time and place for the witness' testimony shall not be cause for the failure of the witness to appear at the designated time and place or to answer the questions of the officer conducting the examination.

13:47A-14.9 Sequestration of witnesses

Unless permitted in the discretion of the officer conducting the investigation, no witness shall be present during the examination of any other witness called in such proceeding. Where counsel represents more than one witness as set forth in N.J.A.C. 13:47A-14.7 through 14.10, inclusive, counsel shall not inform one witness of the nature and contents of another witness' examination.

13:47A-14.10 Compelling incriminating testimony of witnesses

A witness who has claimed privilege against self-incrimination may be compelled to give testimony pursuant to N.J.S.A 49:3-68(d) only by an order signed by the Bureau Chief with the approval of the Attorney General or the Attorney General's designee. Except as provided in this section, no employee of the Bureau has the authority to compel, orally or in writing, the testimony of a witness or otherwise exempt a witness from prosecution pursuant to N.J.S.A. 49:3-68(d).

13:47A-14.11 Service of subpoenas

Service of subpoenas issued in investigative proceedings shall be effected in the manner prescribed by N.J.A.C. 13:47A-13.7 through 13.10, inclusive, including service upon an attorney who has filed an appearance pursuant to N.J.A.C. 13:47A-13.3 through 13.6.

13:47A-14.12 Access to premises by Bureau; generally

All persons registered with the Bureau shall, upon request, provide members of the Bureau's staff immediate access, during regular business hours, to the premises at the registered person's place of business including, but not limited to, access to all those areas where documents are stored or where trading or investor solicitation is conducted.

13:47A-14.13 Observation of conduct of business by Bureau

A person registered with the Bureau shall accord members of the Bureau staff the opportunity to observe the conduct of business at the registered person's place of business.

13:47A-14.14 Access to documents by Bureau

(a) Upon request of members of the Bureau staff, a person registered with the Bureau shall make available for immediate inspection any or all business records and documents required to be kept or maintained by registered persons under the Uniform Securities Law or regulations issued pursuant thereto.

(b) Members of the Bureau staff, without interference, shall be entitled to examine any and all business records and documents required to be kept or maintained by registered persons under the Uniform Securities Law or regulations issued pursuant thereto.

(c) Members of the Bureau staff shall be entitled to photocopy, without interference, on the premises of the registered person's business address, any and all business records and documents required to be kept or maintained by registered persons under the Uniform Securities Law or regulations issued pursuant thereto.

13:47A-14.15 Access to persons by Bureau

(a) Members of the Bureau staff shall be afforded the opportunity to interview individuals registered with the Bureau as well as any other persons within the scope of N.J.A.C. 13:47A-13.10 who may be present on the registered person's premises and who voluntarily consent to be interviewed by members of the Bureau staff.

(b) Any objection to such an interview shall be made only by the individual from whom the interview is requested. No objection may be interposed by any other individual other than counsel who represents the individual pursuant to N.J.A.C. 13:47A-13.3 through 13.5, inclusive. Bureau staff, if requested by the individual from whom the interview is requested, shall allow the individual to communicate with counsel prior to commencing an interview.

(c) An interview under N.J.A.C. 13:47A-14.10 or this section may be conducted either on the premises of the registered person or at the offices of the Bureau, at the discretion of the Bureau staff. If an interview is conducted on the registered person's premises, Bureau staff shall be given access to a private, enclosed area where the interview can go forward without monitoring, surveillance or interference by any kind of device or by persons who are not members of the Bureau staff.

13:47A-14.16 Failure to cooperate

(a) A registered person shall cooperate in any inquiry, investigation or inspection conducted by, or on behalf of, the Bureau, for the purposes of determining whether or not any person has violated or is about to violate any provision of the Uniform Securities Law or any regulation or order promulgated thereunder. A registered person's willful failure to cooperate, absent good cause or *bona fide* claim of privilege, may be deemed by the Bureau a violation of the Uniform Securities Law within the meaning of N.J.S.A. 49:3-58(a)(2)(ii) and thus subject the registered person to denial, suspension, or revocation of registration.

(b) The following are examples of conduct by a registered person that may be deemed a failure to cooperate:

1. The failure to timely respond by way of appearance or production of documents to a subpoena or order issued by the Bureau pursuant to N.J.S.A. 49:3-68 or as may otherwise be provided by law;

2. The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 49:3-68 or other applicable law unless the response to said question is subject to a *bona fide* claim of privilege.

3. The failure to grant Bureau personnel access to the business premises of a registered person or to the records and documents the registered person is required, by statute or rule, to make available for inspection;

4. The failure to attend any scheduled proceeding at which the registered person's appearance is directed. In the event a registered person elects to retain counsel for the purpose of representation in any such proceeding, it shall be the registered person's responsibility to do so in a timely fashion. The failure of a registered person to retain counsel, absent a showing of good cause therefor, shall not require an adjournment of the proceeding;

5. The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 49:3-68 or any other applicable law; or

6. Aiding or abetting another registered person's failure to cooperate.

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TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route U.S. 206
Princeton Township, Mercer County
Proposed Amendment: N.J.A.C. 16:28A-1.57

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

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

Proposal Number: PRN 1994-506.

Submit comments by October 19, 1994 to:
William E. Anderson, Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.57 to establish a bus stop on Route U.S. 206 in the Township of Princeton, Mercer County. The provisions of this proposed amendment will improve the flow of traffic and enhance safety along the highway system.

The amendment is being proposed at the request of the local government of the Township of Princeton in a Resolution adopted on May 9, 1994, citing the need for a public transportation stop for the Washington Oaks Development 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 concluded that the establishment of a bus stop along Route U.S. 206 at Hutchinson Drive was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish a bus stop parking restriction along Route U.S. 206 at Hutchinson Drive in the Township of Princeton, Mercer County, to improve traffic flow and enhance safety. Approriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government 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. Violators of 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 amendment 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 amendment primarily affects 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**):

16:28A-1.57 Route U.S. 206

(a) (No change.)

(b) The certain parts of State highway Route U.S. 206 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.-4. (No change.)

5. Along the northbound side in Princeton Township, Mercer County:

i. (No change.)

ii. Near side bus stops:

(1)-(4) (No change.)

iii. (No change.)

6.-12. (No change.)

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

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Route 179
Lambertville City, Hunterdon County
Proposed Amendment: N.J.A.C. 16:28-1.158

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1994-507.

Submit comments by October 19, 1994 to:
William E. Anderson, Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.158 to revise certain "speed limit" zones along Route 179 in the City of Lambertville, County of Hunterdon, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon request of the local government of the City of Lambertville by a Resolution adopted February 28, 1994, citing numerous cross streets and a build up of the area into a more residential zone with little or no off-street parking, and as a part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that reducing certain "speed limit" zones along Route 179 was warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been changed.

Social Impact

The proposed amendment will establish a reduced "speed limit" zone along Route 179 in the City of Lambertville, Hunterdon County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" 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.

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Regulatory Flexibility Statement

The proposed amendment 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 amendment primarily affects 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]):

16:28-1.158 Route 179

(a) The rate of speed designated for the certain parts of State highway Route 179, described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In the City of Lambertville, Hunterdon County:

(1) Zone one: 25 mph between the northerly end of the Delaware Bridge and Route N.J. 165 (approximate mileposts 0.05 to 0.37);

[(2) Zone two: 40 mph between Route N.J. 165 and 475 feet north of Hancock Street (approximate mileposts 0.37 to 0.69); thence;

[(3) Zone three: 45 mph between 475 feet north of Hancock Street and the Township of West Amwell southerly line (approximate mileposts 0.69 to 0.90).]

(2) Zone two: 35 mph between Bridge Street-Route 165 and Hancock Street (approximate mileposts 0.37 to 0.60); thence

(3) Zone three: 40 mph between Hancock Street and the City of Lambertville-Township of West Amwell corporate line (approximate mileposts 0.60 to 0.90.

ii.-iii. (No change.)

2.-3. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 29

City of Trenton, Ewing Township and Hopewell Township in Mercer County and West Amwell Township, City of Lambertville, Delaware Township, Stockton Borough, Kingwood Township and Frenchtown Borough in Hunterdon County

Proposed Amendment: N.J.A.C. 16:28-1.77

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1994-511.

Submit comments by October 19, 1994 to:

William E. Anderson, Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.77 to revise "speed limit" zones along Route N.J. 29 for its entire length from the City of Trenton, Ewing Township and Hopewell Township in Mercer County, through West Amwell Township, City of Lambertville, Delaware Township, Stockton Borough, Kingwood Township and Borough of Frenchtown in Hunterdon County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from the local government of the City of Lambertville in a Resolution adopted on February 28, 1994, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation and review of the existing rule concluded that revising all the "speed limit" zones along Route N.J. 29 was warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been changed.

Social Impact

The proposed amendment will establish revised "speed limit" zones along Route N.J. 29 from the City of Trenton, Ewing Township and Hopewell Township in Mercer County, through West Amwell Township, City of Lambertville, Delaware Township, Stockton Borough, Kingwood Township and Borough of Frenchtown in Hunterdon County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" 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 amendment 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 amendment primarily affects 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]):

16:28-1.77 Route 29

(a) The rate of speed for the certain part of State highway Route 29 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

[i. Zone one: 50 mph beginning at the City of Trenton from South Warren Street (milepost 0.00) to Lee Avenue (Milepost 2.7); thence

ii. Zone two: 40 mph in the City of Trenton to Aberfeldy Drive (milepost 3.5); thence

iii. Zone three: 55 mph in the City of Trenton extending into Ewing Township to the Route 175 overpass (milepost 6.2); thence

iv. Zone four:

(1) 45 mph in Ewing Township and Hopewell Township between Route 175 overpass (milepost 6.2) and 200 feet south of Wilford Avenue (milepost 8.57); thence

(2) 40 mph in Hopewell Township between 200 feet south of Wilford Avenue (milepost 8.57) and 550 feet north of Washington Crossing-Pennington Road (milepost 8.8); thence

(3) 45 mph between 550 feet north of Washington Crossing-Pennington Road (milepost 8.8) and 600 feet south of Church Road (milepost 9.7).

v. Zone five: 40 mph in Hopewell Township to Fiddlers Creek (milepost 10.1); thence

vi. Zone six: 45 mph in Hopewell Township extending into West Amwell Township to the West Amwell Township-City of Lambertville corporate line (milepost 14.7); thence

vii. Zone seven: 40 mph in the City of Lambertville to Mount Hope Street (milepost 15.4); thence

viii. Zone eight:

(1) 25 mph in the City of Lambertville to Elm Street (milepost 16.1); except that the maximum speed shall be 15 mph in the City of Lambertville, Hunterdon County, within the Lambertville Public School Zone during recess, when the presence of children is clearly visible from the roadway, or while children are going to or leaving school, during opening or closing hours; thence

ix. Zone nine: 35 mph in City of Lambertville to Cherry Lane (milepost 16.45); thence

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x. Zone ten: 45 mph in the City of Lambertville extending into Delaware Township to 1,200 feet south of Brookville Hollow Road (milepost 18.1); thence

xi. Zone 11: 35 mph in Delaware Township extending into Stockton Borough to 1,200 feet south of Bridge Street (milepost 18.9); thence

xii. Zone 12: 25 mph in Stockton Borough to Route 523 (milepost 19.2); thence

(1) "15 mph when flashing" school speed zone within the Stockton Elementary School Zone.

xiii. Zone 13: 35 mph in Stockton Borough extending into Delaware Township to 1,500 feet north of Route 519 (milepost 20.1); thence

xiv. Zone 14: 50 mph in Delaware Township extending through Kingwood Township and into Frenchtown Borough to Washington Street (milepost 30.95).]

i. In Mercer County:

(1) In the City of Trenton:

(A) Zone one: 50 miles per hour between South Warren Street and Lee Avenue (approximate mileposts 3.20 to 5.93); thence

(B) Zone two: 40 miles per hour between Lee Avenue and Aberfeldy Drive (approximate mileposts 5.93 to 6.73); thence

(C) Zone three: 55 miles per hour between Aberfeldy Drive and the City of Trenton-Township of Ewing corporate line (approximate mileposts 6.73 to 6.99); thence

(2) In Ewing Township:

(A) Zone one: 55 miles per hour between the City of Trenton-Township of Ewing corporate line and the Route 175 overpass (approximate mileposts 6.99 to 9.42); thence

(B) Zone two: 45 miles per hour between the Route 175 overpass and the Township of Ewing-Township of Hopewell corporate line (approximate mileposts 9.42 to 10.51); thence

(3) In Hopewell Township:

(A) Zone one: 45 miles per hour between the Ewing Township-Hopewell Township corporate line and 200 feet south of Wilford Avenue (approximate mileposts 10.51 to 11.79); thence

(B) Zone two: 40 miles per hour between 200 feet south of Wilford Avenue and 550 feet north of Washington Crossing-Pennington Road (approximate mileposts 11.79 to 12.10); thence

(C) Zone three: 45 miles per hour between 550 feet north of Washington Crossing-Pennington Road and 600 feet south of Church Road (approximate mileposts 12.10 to 13.00); thence

(D) Zone four: 40 miles per hour between 600 feet south of Church Road and Fiddlers Creek (approximate mileposts 13.00 to 13.37); thence

(E) Zone five: 45 miles per hour between Fiddlers Creek and the Township of Hopewell-Township of West Amwell corporate line (approximate mileposts 13.37 to 17.03); thence

ii. Hunterdon County:

(1) In West Amwell Township:

(A) Zone one: 45 miles per hour between the Township of Hopewell-Township of West Amwell corporate line and the Township of West Amwell-City of Lambertville corporate line (approximate mileposts 17.03 to 18.03); thence

(2) In the City of Lambertville:

(A) Zone one: 40 miles per hour between the Township of West Amwell-City of Lambertville corporate line and 500 feet south of Mount Hope Street (approximate mileposts 18.03 to 18.52); thence

(B) Zone two: 35 miles per hour between 500 feet south of Mount Hope Street and Mount Hope Street (approximate mileposts 18.52 to 18.62); thence

(C) Zone three: 25 miles per hour between Mount Hope Street and Elm Street (approximate mileposts 18.62 to 19.42) except that the maximum speed limit shall be 15 miles per hour in the City of Lambertville, within the Lambertville Public School Zone while 15 miles per hour "when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours.

(D) Zone four: 35 miles per hour between Elm Street and Cherry Lane (approximate mileposts 19.42 to 19.63); thence

(E) Zone five: 45 miles per hour between Cherry Lane and the City of Lambertville-Township of Delaware corporate line (approximate mileposts 19.63 to 19.93); thence

(3) In Delaware Township:

(A) Zone one: 45 miles per hour between the City of Lambertville-Township of Delaware corporate line and 1,200 feet south of Brookville Hollow Road (approximate mileposts 19.93 to 21.40); thence

(B) Zone two: 35 miles per hour between 1,200 feet south of Brookville Hollow Road and the Township of Delaware-Borough of Stockton southernmost corporate line (approximate mileposts 21.40 to 21.65); thence

(4) In Stockton Borough:

(A) Zone one: 35 miles per hour between the Township of Delaware-Borough of Stockton southernmost corporate line and 1,200 feet south of Bridge Street (approximate mileposts 21.65 to 22.15); thence

(B) Zone two: 25 miles per hour between 1,200 feet south of Bridge Street and Stockton-Flemington Road (CR 523) (approximate mileposts 22.15 to 22.44), except for 15 miles per hour when passing through the Stockton Elementary School Zone when "15 mph when flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours.

(C) Zone three: 35 miles per hour between Stockton-Flemington Road (CR 523) and the Borough of Stockton-Township of Delaware northernmost corporate line (approximate mileposts 22.44 to 22.97); thence

(5) In Delaware Township (see also (a)1ii(3) above):

(A) Zone three: 35 miles per hour between the Borough of Stockton-Township of Delaware northernmost corporate line and 1,500 feet north of Kingwood-Stockton Road (CR 519) (approximate mileposts 22.97 to 23.32); thence

(B) Zone four: 50 miles per hour between 1,500 feet north of Kingwood-Stockton Road (CR 519) and the Township of Delaware-Township of Kingwood corporate line (approximate mileposts 23.32 to 26.26); thence

(6) In Kingwood Township:

(A) Zone one: 50 miles per hour between the Township of Delaware-Township of Kingwood corporate line and the Township of Kingwood-Borough of Frenchtown corporate line (approximate mileposts 26.26 to 34.06); thence

(7) In Frenchtown Borough:

(A) 50 miles per hour between the Township of Kingwood-Borough of Frenchtown corporate line and Washington Street (approximate mileposts 34.06 to 34.26).

(a)

DIVSION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions
Route N.J. 47
Vineland City, Cumberland County
Proposed Amendment: N.J.A.C. 16:31-1.8

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.

Proposal Number: PRN 1994-508.

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Submit comments by October 19, 1994 to:
William E. Anderson, Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.8 concerning turning movements along Route N.J. 47 to effect "no left turns" in the City of Vineland, Cumberland County.

The provisions of this proposed amendment will improve the flow of traffic and enhance safety along the highway system.

The amendment is being proposed at the request of the local government of the City of Vineland by Resolution No. 93-758 adopted on November 9, 1993 and Resolution No. 94-126 adopted on March 22, 1994, requesting left turn prohibitions at the Cumberland Mall, and as part of the Department's ongoing review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the turning movement restriction along Route N.J. 47 was warranted. N.J.A.C. 16:31-1.18 is also being re-written to conform with the new format for easier reference to the restrictions adopted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish turn restrictions along Route N.J. 47 in the City of Vineland, Cumberland County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory 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 amendment 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 amendment primarily affects 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]):

16:31-1.8 Route 47

(a) Turning movements of traffic on certain parts of State highway Route 47 described in this subsection are regulated as follows:

[1. No left turn:

i. In Deptford Township, Gloucester County:

(A) From north on Route 47 to west on Bankbridge Road.]

1. In Cumberland County:

i. In the City of Vineland:

(1) No left turn:

(A) From southbound on Route 47 to eastbound into the most northerly driveway of the Cumberland Mall.

(B) From westbound on the most northerly driveway of the Cumberland Mall to southbound on Route 47.

[2.]**(2)** No "U" turn:

[i. In the City of Vineland, Cumberland County:]

(A) From 925 feet south of College Drive to a point 1,065 feet south of College Drive.

2. In Gloucester County:

i. In Deptford Township:

(1) No left turn:

(A) From north on Route 47 to west on Bankbridge Road.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

Public Employees' Retirement System
School Year Members

Proposed Amendment: N.J.A.C. 17:2-4.3

Authorized By: Board of Trustees, Public Employees' Retirement System, Wendy Jamison, Secretary.

Authority: N.J.S.A. 43:15A-17 et seq.

Proposal Number: PRN 1994-512.

Submit comments by October 19, 1994 to:
Peter J. Gorman, Esq.
Executive Assistant
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment clarifies the intent of the recently adopted amendments to N.J.A.C. 17:2-4.3 concerning the same subject matter. Those amendments governed a situation where a school employee whose contract states that his or her full academic year is less than 12 months terminates such employment and accepts a full 12-month position on or before what would have been the expiration date of the previous contract. In such cases, the person would receive credit within the retirement system for the full months between the termination of actual employment under the former contract and the start of the new contract, if the employee returns to the same employer. The actual intent was to cover situations where the member is either returning to the same employer, or to another employer also participating in the Public Employees' Retirement System. The purpose of this proposed amendment is to provide comparable treatment to persons returning to a different employer who is participating in the Public Employees' Retirement System.

Social Impact

The proposed amendment will affect all present and future school employees whose regular work is less than 12 months who terminate such a position and accept a full 12 month position with another employer participating in the Public Employees' Retirement System before the termination of that former contract. This amendment would eliminate the possible gap in service credit that otherwise would occur if the member converted to a full 12 months contract with a different employer.

Economic Impact

Since the proposed amendment is merely a restatement of the current rule in effect and is an attempt to provide clarification regarding the service credit, there are no adverse economic consequences to either the member or the employer who may be affected by the amendment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or public employees, the amendments will not have any effect upon small businesses.

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

17:2-4.3 School year members

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

(d) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer **or another employer that participates in the Public Employees' Retirement System** and begins employment on or before the date that was established by the previous year's contract position,

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such member will receive service credit within the Public Employees' Retirement System for the period between the end of the previous contract and the new 12 month position.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications
Forms; Key Standard Qualifier Renewal Form
Casino Licensees
Application for Renewal of Qualification
Proposed New Rule: N.J.A.C. 19:41-5.13
Proposed Amendment: N.J.A.C. 19:43-2.7A

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a and 89b.

Proposal Number: PRN 1994-518.

Submit written comments by October 19, 1994 to:
Ruth S. Morgenroth, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed new rule describes a new Key Standard Qualifier Renewal Form and outlines the information required in the form. This new, shorter form will replace renewal applications previously filed by any person required to qualify to the standards of a key employee by virtue of his or her relationship with a casino licensee or holding company of a casino licensee.

The proposed amendment modifies the present rule which specifies the renewal application which qualifiers of casino licensees and holding companies of casino licensees are required to file by substituting the new Key Standard Qualifier Renewal form for previous renewal application requirements.

Social Impact

The proposed new rule and amendment will assist qualifiers of casino licensees and holding companies of casino licensees to determine the appropriate renewal form to file. This information should prove useful to such persons by explaining the types of information which must be furnished as part of the renewal application process.

Economic Impact

The proposed new rule and amendment are not expected to have any significant economic impact. However, the proposed Key Standard Qualifier Renewal Form requires significantly less information than is currently required to be provided to update a Personal History Disclosure Form 1A by qualifiers of casino licensees and their holding companies. Therefore the time required to prepare this form will be less than the time required for preparing the current renewal application. It is anticipated that these time savings can be translated into monetary savings as well. Although the proposed renewal form requires slightly more information than was previously required to be provided to update a Personal History Disclosure Form 1B by those qualifiers of holding companies who are currently permitted to use this application form, the new form is in simple format which should be easier to complete.

Regulatory Flexibility Statement

The proposed new rule and amendment affects only individuals required to be qualified to key standards because of their relationships with either a casino licensee or a holding company of a casino licensee. These individuals do not qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

19:41-5.13 Key Standard Qualifier Renewal Form

(a) A Key Standard Qualifier Renewal Form shall be in a format prescribed by the Commission and may require the applicant to provide the following information:

1. Name, including any aliases or nicknames;

2. Date of birth;

3. Physical description;

4. Current address and residence history;

5. Social security number, which information is voluntarily provided in accordance with section 7 of the Privacy Act, 5 U.S.C. 552a;

6. The casino licensee or applicant, or holding company, as applicable, with which the applicant is affiliated, and the nature of the applicant's position with or interest in such entity;

7. Telephone number at current place of employment;

8. Financial data, as follows:

i. All assets and liabilities of the applicant and the applicant's spouse and dependent children, as indicated on the net worth statement and supporting schedules in a format prescribed by the Commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes payable, loans, accounts payable and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;

ii. Bank accounts and safe deposit boxes; and

iii. Copies of Federal tax returns and related information.

(b) A Key Standard Qualifier Renewal Form may also require an applicant to provide the following information for the time period since the submission of his or her most recent disclosure form:

1. Judgments or petitions for bankruptcy or insolvency concerning the applicant or any business entity in which the applicant held a five percent or greater interest, other than a publicly traded corporation, or in which the applicant served as an officer or director;

2. Referral or finder's fees in excess of $10,000;

3. Gifts in excess of $10,000 given or received by the applicant or the applicant's immediate family;

4. Business owned;

5. Government positions and offices presently or previously held, and offices, trusteeships, directorships or fiduciary positions presently or previously held with any business entity;

6. Trusteeships or other fiduciary positions held by the applicant and the applicant's spouse, and any denial or suspension of, or removal from, such positions;

7. Licenses and other approvals held by or applied for by the applicant or, where specified, the applicant's spouse, in this State or any other jurisdiction, as follows:

i. Any professional or occupational license held by or applied for by the applicant or the applicant's spouse;

ii. Any license, permit, approval or registration required to participate in any lawful gambling operation in this State or any jurisdiction held by or applied for by the applicant; and

iii. Any denial, suspension or revocation by a governmental agency of a license, permit or certification held by or applied for by the applicant or the applicant's spouse, or any entity in which the applicant or the applicant's spouse was a director, officer, partner or an owner of a five percent or greater interest;

8. Civil, criminal and investigatory proceedings in any jurisdiction, as follows:

i. Arrests, charges or convictions for any criminal or disorderly persons offenses committed by the applicant or any member of the applicant's immediate family;

ii. Any instance where the applicant has been named as an unindicted party or co-conspirator in a criminal proceeding or held as a material witness;

iii. Any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, or grand jury or investigatory body;

iv. Lawsuits to which the applicant was or is a party; and

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v. Any citation or charge for a violation of a statute, regulation or code of any jurisdiction, other than a criminal, disorderly persons, petty disorderly persons or motor vehicle violation; and

9. Whether any entity in which the applicant has been a director, officer, principal employee or a holder of more than five percent interest has:

i. Donated or used funds or property for the use or benefit of or in opposing any government, political party, candidate or committee;

ii. Compensated its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposing any government or political party;

iii. Made any loans, donations or other disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions;

iv. Made bribes or kickbacks to any government official; and

v. Maintained a bank account or other account which is not reflected on the books or records of the business or which is in a name other than the name of the business.

(c) In addition to the information in (a) and (b) above, a completed Key Standard Qualifier Renewal Form may include the following:

1. A signed, dated and notarized certification of truth; and

2. A signed, dated and notarized Release Authorization which shall direct all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Commission or the Division.

19:43-2.7A Application for renewal of qualification

(a) (No change.)

(b) An application for renewal of qualification shall consist of the following:

[1. For the first and every third renewal application thereafter:]

[i.]**1.** A complete [PHD-1A or PHD-1B, as required by N.J.A.C. 19:43-2.6 or 2.7] **Key Standard Qualifier Renewal Form;**

[ii.]**2.** A signed, dated and notarized certification of truth; and

[iii.]**3.** A signed, dated and notarized release authorization which shall direct all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Commission or the Division.[; or

2. For any other renewal application:

i. The information required in N.J.A.C. 19:41-5.2(a)1-5, 8-9, 18i, 19 and 20i (for a PHD-1A) or the information required in N.J.A.C. 19:41-5.3(a)1-5, 9, 14i and 15i (for a PHD-1B);

ii. Updated information regarding any changes to any other information provided in the person's initial application for qualification or most recent renewal application;

iii. Federal income tax returns for the two preceding years and related information;

iv. A signed, dated and notarized certification of truth; and

v. A signed, dated and notarized Release Authorization which shall direct all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Commission or the Division.]

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Substitution, Redemption and Consolidation of Patron Checks
Payments for Redemption
Proposed New Rule: N.J.A.C. 19:45-1.26A
Proposed Amendments: N.J.A.C. 19:45-1.1 and 1.26

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

Authority: N.J.S.A. 5:12-63c, 69, 70g, l and m, 99 and 101.

Proposal Number: PRN 1994-519.

Submit written comments by October 19, 1994 to:
Leonard J. DiGiacomo, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed new rule, N.J.A.C. 19:45-1.26A, would establish standards and procedures for casino licensees to receive payments of cash, cash equivalents, casino checks, slot tokens, gaming chips or gaming plaques from a drawer of a patron check or from someone acting on the drawer's behalf for the purpose of applying such payment to redeem the drawer's patron checks. As proposed by N.J.A.C. 19:45-1.26A(b), casino licensees wishing to engage in such transactions are required to submit internal controls to govern those transactions.

A casino licensee that receives payments on behalf of a drawer is required to return to the drawer his or her patron checks provided the payments are applied in a total or partial redemption. N.J.A.C. 19:45-1.26A(c). If at the time a payment is made it is not possible to accomplish a total or partial redemption, the casino licensee will be obligated to apply the payment to any unpaid returned checks of the drawer. If the casino licensee does not have any unpaid returned checks, but the drawer has issued outstanding patron checks which either have not yet been deposited or are deposited but not yet cleared, then the casino licensee must hold the payment until those items clear. If the casino licensee does not have any unpaid returned check or any outstanding patron check of the drawer, it must then immediately return the payment to the drawer or, at the drawer's direction, put the payment on deposit for the drawer in a patron cash deposit account. N.J.A.C. 19:45-1.26A(d).

Any payment that is put on deposit pursuant to N.J.A.C. 19:45-1.26A(d) must satisfy the requirements of N.J.A.C. 19:45-1.24, except that the drawer's signature need not appear on the duplicate of the Customer Deposit Form and the form must be sent to the drawer by mail. N.J.A.C. 19:45-1.26A(e). Once the payment is put on deposit, the drawer may use or obtain a refund of the deposit only in accordance with N.J.A.C. 19:45-1.24 and, if applicable, N.J.A.C. 19:45-1.24B.

Proposed N.J.A.C. 19:45-1.26A(f) requires that a casino licensee, which has not yet returned to a drawer any payment that it has received under N.J.A.C. 19:45-1.26A, must use the payment to reduce the amount to be collected from the drawer or deemed uncollectible whenever a patron check of the drawer is deposited for collection but is dishonored by the bank.

Any payments that are made under N.J.A.C. 19:45-1.26A are for the sole benefit of the drawer except as otherwise allowed. Absent specific authorization in the Commission's rules, payments made under that section cannot be made by a junket representative, a junket enterprise or its employees or agents, or by a casino licensee or its employees or agents. N.J.A.C. 19:45-1.26A(g).

Casino licensees cannot compel a drawer or someone acting on the drawer's behalf to make payments under N.J.A.C. 19:45-1.26A, and are specifically prohibited from conditioning the establishment or increasing of a credit limit on such payments being made. N.J.A.C. 19:45-1.26A(g).

The definitions of "patron check" and "replacement check" are proposed for addition to N.J.A.C. 19:45-1.1.

Technical and substantive amendments are also being proposed to N.J.A.C. 19:45-1.26. The technical amendments merely conform that

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section with the proposed new rule and the added definitions. Of substance, the Commission will now permit patron checks that are redeemed, consolidated or replaced to be returned to the drawer by mail. N.J.A.C. 19:45-1.26(h).

This issue of the New Jersey Register also contains a notice of adoption regarding cash complimentary gifts.

This proposal on payment redemptions incorporates the language added to N.J.A.C. 19:45-1.26 by the notice of adoption, which should be consulted for a full understanding of the changes encompassed by this proposal.

Social Impact

The Commission anticipates that the proposed new rule and amendments should facilitate the countercheck collection process and thereby may have a positive social impact.

Economic Impact

The Commission anticipates that a casino licensee may experience a positive economic impact from the proposed new rule and amendments because of the prospect that it will be easier for casino licensees to collect on outstanding gaming receivables.

Regulatory Flexibility Statement

No regulatory flexibilty analysis is required because the proposed new rule and amendments will only affect the operation of New Jersey 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.

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.

. . .

"Patron check" [is defined in N.J.A.C. 19:45-1.25] **means a Counter Check, a Slot Counter Check or a replacement check.**

. . .

"Replacement check" is defined in N.J.A.C. 19:45-1.26.

. . .

19:45-1.26 [Procedure for] **Substitution,** redemption[,] **and** consolidation [or substitution] of **patron** checks [submitted by gaming patrons]

(a) The drawer of an undeposited Counter Check or Slot Counter Check may use a personal check to substitute for or partially redeem such Counter Check or Slot Counter Check or to consolidate two or more undeposited Counter Checks or Slot Counter Checks if the personal check is drawn on an account which has been verified pursuant to N.J.A.C. 19:45-1.27, complies with the requirements of N.J.A.C. 19:45-1.25(b) and (c), and is deposited or redeemed in accordance with the requirements of N.J.S.A. 5:12-101 and this chapter.

1. For purposes of this chapter, a personal check which is used by a drawer in a substitution, partial redemption or consolidation transaction shall be referred to as a "replacement check."

2. The drawer of an undeposited replacement check may use another replacement check in a substitution, consolidation or partial redemption transaction involving the original replacement check.

[(a)]**(b)** The drawer of [a] **an undeposited** [Counter Check or Slot Counter Check] **patron check** may redeem it:

1. In its entirety by exchanging cash, cash equivalents, complimentary cash gifts, **casino checks, slot tokens,** gaming chips[,] **or gaming** plaques[, or any combination of another check, cash,] **in an amount equal to the amount of the patron check being redeemed; or**

2. In part by exchanging:

i. Another patron check in a lesser amount; and

ii. Cash, cash equivalents, complimentary cash gifts, **casino checks, slot tokens,** gaming chips or **gaming** plaques **in an amount which equals the difference between the amount of the check exchanged in (b)2i above and the amount of the patron check being partially redeemed.**

(c) If a drawer has more than one **undeposited** [Counter Check or Slot Counter Check] **patron check** outstanding, such checks shall be redeemed in reverse chronological order (the most recently dated **patron** check shall always be redeemed first).

1. If more than one **patron** check bears the same date, the drawer may choose the order in which [he wishes] to redeem the identically dated checks.

2. If, pursuant to its internal controls, a casino licensee does not require a patron check used in a substitution, consolidation or partial redemption transaction to be dated with the date of the initial patron check being substituted, consolidated or partially redeemed, the date of the initial patron check, not the date of the replacement, consolidation or partial redemption check, shall be used to determine the order in which outstanding patron checks shall be redeemed.

[(b)]**(d)** The drawer of a **patron** check may consolidate some or all **undeposited** [Counter Checks or Slot Counter Checks] **patron checks** by exchanging another **patron** check in an amount equal to the total **amount of the outstanding patron** [of] checks [previously exchanged] **being consolidated.**

[(c) The drawer of a Counter Check or Slot Counter Check may substitute a personal check for the Counter Check or Slot Counter Check.]

[(d)]**(e)** All consolidations, total or partial redemptions or substitutions of **patron** checks by gaming patrons shall be made [at the] **by** general cashiers' **at the cashiers'** cage. Consolidation, [or] redemption **or substitution** of [non-gaming] **personal** checks **exchanged for non-gaming purposes pursuant to N.J.A.C. 19:45-1.25(d)1v** shall not be allowed.

[(e)]**(f)** No casino licensees or any other person licensed under the [Casino Control] Act, or any other person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the [Casino Control] Act, shall accept any **patron** check [or series of checks] in redemption, consolidation or substitution of [another] **any patron** check [or checks] for the purpose of avoiding or delaying the deposit of a **patron** check [or checks] in a bank for collection or payment within the time periods specified in N.J.A.C. 19:45-1.28.

[(f)]**(g)** Upon [acceptance of cash, cash equivalents, complimentary cash gifts, gaming chips and plaques, or another check in] **completion of a** redemption, consolidation or substitution [of a check(s)] **transaction pursuant to this section,** the general cashier shall [immediately] return [to the gaming patron the check(s)] **any original patron check** being redeemed, consolidated or substituted **to the drawer in accordance with the requirements in (h) below.** If [such] **the** redemption, consolidation or substitution **of a patron check** is accomplished by the acceptance of another **patron** check, the general cashier accepting [such] **the new patron** check shall date and time stamp the **new** check, place his or her initials on the **new** check, and record on the **new** check the serial number of [the] **any** Counter Check[(s)], [or] Slot Counter Check[(s)] **or replacement check** being redeemed, consolidated or [replaced.] **substituted. The new patron check shall be dated with the date of the initial patron check being redeemed, consolidated or substituted unless the internal controls of the casino licensee include an independent procedure to ensure that the date of the initial patron check shall be used to determine the date by which the new patron check shall be redeemed or deposited pursuant to N.J.A.C. 19:45-1.28.**

(h) Any original patron check which may be returned to the drawer pursuant to this section or N.J.A.C. 19:45-1.26A shall be returned directly to the drawer by one of the following methods:

1. If the drawer personally appears at the cashiers' cage and requests the return of the check, the general cashier shall:

i. Obtain the original patron check from the check bank cashier;

ii. Verify the identity of the drawer through signature comparison, examination of identification credentials, comparison of the drawer's actual appearance to the physical description in the drawer's credit file or personal attestation by a cage or casino supervisor as to the identity of the drawer; and

iii. Return the original patron check to the drawer contemporaneously with the request.

2. If the drawer requests, either orally or in writing, that one, some or all of his or her patron checks be returned by mail, the

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casino licensee shall maintain a record of the specific terms of any oral request or a copy of the written request in the credit file of the drawer and the check bank cashier shall:

i. Obtain the original patron check;

ii. Compare the signature on the patron check to the signature on the written request, if any; and

iii. Present the original patron check to a cage supervisor who shall direct a cashiers' cage employee, as authorized in the casino licensee's internal controls, to mail the patron check to the drawer's current address as indicated in his or her credit file or to any other address requested by the drawer and documented in the credit file, with the mailing to be made by a method, such as certified mail, return receipt requested, that ensures that the casino licensee receives written confirmation of the delivery to the drawer.

19:45-1.26A Acceptance of payments toward outstanding patron checks

(a) A casino licensee may, in its discretion, permit the drawer of an undeposited patron check or any person acting for the benefit of such drawer to deposit cash, cash equivalents, casino checks, slot tokens, gaming chips or gaming plaques with a general cashier for the purpose of having such payment applied to the total or partial redemption of the patron check by the drawer pursuant to N.J.A.C. 19:45-1.26.

(b) Prior to a casino licensee accepting payments pursuant to (a) above, the casino licensee shall establish a system of internal controls for such transactions, which internal controls shall, at a minimum, provide for:

1. A method of documenting or recording the receipt of each such payment, which method shall include, without limitation, the following:

i. The names of the drawer and the person making the payment;

ii. All significant details concerning the transaction;

iii. The signatures of the person making the payment and the general cashier accepting the payment; and

iv. The issuance of a receipt to the person making the payment;

2. The maintenance of the general cashier's imprest inventory; and

3. The notation in the drawer's credit account of the receipt of the payment.

(c) If any payments received by a casino licensee pursuant to this section entitle the drawer of a patron check to redeem the original patron check in its entirety, or if any such payments received in conjunction with the submission of a new patron check by the drawer in a lesser amount entitle the drawer of a patron check to redeem the original patron check in part, the casino licensee shall return the original patron check to the drawer in accordance with the provisions of N.J.A.C. 19:45-1.26.

(d) If the drawer of a patron check fails to redeem it prior to the date on which the patron check must be deposited pursuant to N.J.A.C. 19:45-1.28, the casino licensee shall deposit the patron check regardless whether any payment has been received pursuant to the provisions of this section. The casino licensee, after timely depositing the patron check and allowing a commercially reasonable time for the patron check to clear in accordance with its internal controls established pursuant to N.J.A.C. 19:45-1.28(f), shall apply any payments received pursuant to this section in accordance with the following priorities:

1. If the casino licensee has any returned checks issued by the drawer which have not been completely satisfied, the payments shall be applied to such obligations;

2. If the casino licensee, after all obligations of the drawer described in (d)1 above have been completely satisfied, possesses any outstanding patron checks issued by the drawer which have not been deposited or cleared in accordance with the requirements of N.J.A.C. 19:45-1.28, the casino licensee shall hold the payments until all outstanding patron checks of the drawer have cleared; or

3. If the casino licensee does not have any unpaid returned checks or outstanding patron checks issued by the drawer, the payments shall be returned immediately to the drawer unless the drawer has orally or in writing instructed the casino licensee to retain the payments in a cash deposit account and the casino licensee maintains in the credit file a record of the specific terms of those instructions, including a copy of any written instructions.

(e) Any payment received pursuant to this section that the drawer directs be deposited in a cash deposit account pursuant to (d)3 above shall be deposited by the casino licensee in accordance with the requirements of N.J.A.C. 19:45-1.24 except that, if the drawer is not present in the casino hotel:

1. The Customer Deposit Form may be prepared without the patron's signature on the duplicate copy;

2. The original of the Customer Deposit Form shall be mailed to the drawer in accordance with N.J.A.C. 19:45-1.26(h)2; and

3. After the payment is deposited in the patron cash deposit account, it shall only be used by or refunded to the drawer in accordance with N.J.A.C. 19:45-1.24 and, if applicable, N.J.A.C. 19:45-1.24B.

(f) If a patron check is dishonored by the drawer's bank upon presentation for payment and returned to the casino licensee, any payments received pursuant to this section, including payments that have been transferred to a patron cash deposit account pursuant to (d)3 above, that have not been returned to the drawer shall be used to reduce the amount to be collected from the drawer or to be deemed uncollectible pursuant to the provisions of N.J.A.C. 19:45-1.29.

(g) Except as otherwise provided in this section, any payment authorized by this section shall be made for the sole benefit of the drawer. No junket representative, junket enterprise, employee or agent of a junket enterprise, casino licensee or employee or agent of a casino licensee shall, except as specifically authorized by the rules of the Commission, make a payment for the benefit of the drawer of a patron check pursuant to this section. No casino licensee, or employee or agent thereof, shall require the drawer of a patron check to make, or to have some other person make, the payments authorized by this section as a pre-condition to initially approving or subsequently increasing a credit limit for the drawer or for any other reason whatsoever.

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Jersey Fresh Quality Grading Program
Products and Manner of Use
Cut Flowers; Tomatoes

Adopted Amendments: N.J.A.C. 2:71-2.2, 2.4, 2.5 and 2.6

Proposed: July 18, 1994 at 26 N.J.R. 2831(a).
Adopted: August 25, 1994 by State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: August 26, 1994 as R.1994 d.485, **without change**.

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.

Effective Date: September 19, 1994.
Expiration Date: July 2, 1998.

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

Full text of the adoption follows:

2:71-2.2 Use of "Jersey Fresh" as the logo for the "Jersey Fresh Quality Grading Program" and "Jersey Fresh Quality Premium Program" (referred to as the "logos") on containers of certain fresh fruits, vegetables, shell eggs and cut flowers

(a)-(e) (No change.)

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program and Premium Program

(a) Only the following products may be packed in the Quality Grading Program: Sweet anise (fennel), apples, alfalfa sprouts, asparagus, beets (bunched), beets (topped), beet greens, blueberries, broccoli greens, broccoli rabe (rapini), bunched Italian sprouting broccoli, cabbage (domestic, savoy and red), cabbage (Chinese), cantaloupes, cauliflower, celery root, collard greens, green corn, cubanelle peppers, cubanelle peppers (red), cucumbers (cukes), cucumbers (pickling type), cucumbers (slicing type), dandelion greens, egg plants, endive, escarole, herbs (fresh), horseradish roots, kale, kohlrabi, leeks, bibb lettuce, big Boston lettuce, iceberg lettuce, lettuce (green leaf and red leaf), mustard greens, nectarines, okra, common green onions, parsley, parsnips, peaches, fresh peas, cheese peppers, hot peppers (green or red), sweet peppers (green and red, bell type), sweet peppers (yellow, bell type), sweet potatoes, white potatoes, pumpkins, radishes (bunched), raspberries, rhubarb, romaine, rutabagas, shallots (topped), snap beans, spinach (bunched), spinach plants, strawberries, summer squash (yellow or green), fall and winter type squash (butternut, acorn and spaghetti), Swiss chard, tomatoes (fresh market), cherry tomatoes, plum tomatoes, turnips (topped), turnip greens, watermelons (sugar baby), shell eggs and cut flowers.

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

2:71-2.5 Commodity Grades, packing requirements, packer identification and containers

(a) (No change.)

(b) Commodities shall be graded, packed, identified and contained as follows:

1.-66. (No change.)

67. Tomatoes (fresh market) shall be U.S. No. 1 grade "Mixed Colors." Containers shall be marked with "Extra Large" or "Large" or "Medium" in accordance with the following size specifications: "Extra Large" shall have a two and twenty-four thirty-second inch minimum diameter; "Large" shall have a two and sixteen thirty-second inch minimum diameter and two and twenty-five thirty-second inch maximum diameter. "Medium" shall have a two and eight thirty-second inch minimum diameter and two and seventeen thirty-second inch maximum diameter. Containers may also be marked as follows, in accordance with the facts, "Medium" to "Large" or "Large" and "Extra Large". Containers shall be at least fairly well filled. Cherry tomatoes shall be U.S. No. 1 grade, color turning to full color. All containers shall be at least well filled.

68. Tomatoes (fresh market, 10 pound count pack) shall be U.S. No. 1 grade with pink to red color. Containers shall be marked with count as follows: 15 count, 20 count, 25 count or 30 count in accordance with the following size specifications; 15 count shall have a three and one-half inch minimum diameter and four inch maximum diameter; 20 count shall have a three and one-eighth inch minimum diameter and three and one-half inch maximum diameter; 25 count shall have a two and seven-eights inch minimum diameter and three and one-eighth inch maximum diameter; and 30 count shall have a two and one-half inch minimum diameter and two and seven-eighths inch maximum diameter. Containers must meet minimum of 10 pound net weight.

Recodify existing 68.-72. as 69.-73. (No change in text.)

74. Cut flowers shall consist of buds which are fresh, firm, well shaped but not overmature and stems which are fresh, strong and fairly straight. Buds and stems shall be free from decay and freezing injury and damage caused by dirt of other foreign material, discoloration, moisture, disease, insects, mechanical or other means. In order to allow for variation incident to proper grading and handling, the following tolerance, by count is provided. Not more than a total of five percent in any container may be below the requirements of these specifications, including not more than one-half of one percent for decay.

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

...

"Cut flowers" The following definitions apply to cut flowers:

1. "Damage" means any injury or defect which materially affects the appearance or shipping quality of the cut flowers or foliage.
2. "Fairly straight" means that the stem is of normal growth and is not more than slightly curved or crooked.
3. "Firm" means that the bud is fairly compact and yields slightly to moderate pressure of the fingers.
4. "Free from" means any amount is scorable.
5. "Fresh" means that the bud and foliage are bright, not badly wilted, limp or flabby.
6. "Overmature" means that the flower has opened beyond commercial value.
7. "Stem" means the flower stalks with any attached foliage.
8. "Strong" means that the stem is fairly stiff and sturdy enough to hold the bud in a reasonably erect position.
9. "Well shaped" means that the bud is symmetrical, not lopsided or otherwise deformed.

...

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ENVIRONMENTAL PROTECTION

(a)

LAND USE REGULATION

Standards for Individual Subsurface Sewage Disposal Systems

Readoption with Amendments: N.J.A.C. 7:9A

Proposed: July 5, 1994 at 26 N.J.R. 2715(a).
Adopted: August 18, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Filed: August 18, 1994 as R.1994 d.469, **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. 58:11-23 et seq., 58:10A-1 et seq., including 58:10A-16 et seq., 13:1D-1 et seq., and 26:3A-21 et seq.
DEP Docket Number: 28-94-06/122.
Effective Date: August 18, 1994, Readoption;
September 19, 1994, Amendments.
Expiration Date: August 19, 1999.

Summary of Public Comments and Agency Responses:

On July 5, 1994, the Department of Environmental Protection (Department) proposed to readopt, with amendments, the rules at N.J.A.C. 7:9A, which govern the design and construction, installation, alteration and repair of individual subsurface sewage disposal systems pursuant to the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23, and the Water Pollution Control Act, 59:10A-1 et seq. The Department accepted written comments through August 4, 1994.

The commenters, listed by name and affiliation, were as follows:

1. Atkinson, William D., Gloucester County Department of Health
2. Barkley, Gregg W., Applied Wastewater Technology, Inc.
3. Connolly, William M., State of New Jersey Department of Community Affairs
4. Ferriero, Paul, Ferriero Engineering, Inc.
5. Henry, David A., Township of Montgomery Health, Environment and Vital Statistics
6. Lombardi, Theresa M., New Jersey Environmental Health Association
7. Miller, Theodore G., Franklin Township, Uniform Construction Code Enforcement Agency
8. Osias, Gene S., Vernon Township Health Department
9. Stiansen, Steven E., Sussex County Department of Public Health and Safety
10. Yannaccone, Greg, Yannaccone Associates Inc.

The comments and the Department's responses are summarized below. The numbers in parentheses after each comment identifies the respective commenters listed below.

Subchapter 1. General Provisions

1. COMMENT: The Department should delete N.J.A.C. 7:9A-1.6(e) prohibiting the construction or alteration of a septic system when there is a sanitary sewer line within 100 feet of the property to be served. This section is being used as a political means of limiting growth by limiting access to the sanitary sewer line. (10)

RESPONSE: The Department has not made the suggested deletion. The Department disagrees with the characterization that the reference section is a means to control development, since under most circumstances the facilities to which N.J.A.C. 7:9A-1.6(e) applies are existing facilities with malfunctioning septic systems. Such facilities will be permitted to tie into the sewer line, even if there is a sewer ban in place, since most existing facilities qualify for a sewer ban exemption pursuant to N.J.A.C. 7:14A-22.

2. COMMENT: The requirements of N.J.A.C. 7:9A-1.8(a)2 appear to be in conflict with N.J.A.C. 7:14A-22.4 of the recently adopted revisions to the NJPDES rules concerning treatment works approvals, sewer bans and sewer ban exemptions. Please clarify the jurisdiction of the administrative authority as it relates to septic systems. Additionally, what are the threshold limits which trigger the need for treatment works approvals and/or NJPDES permits for facilities with septic systems? Is the Department going to raise the limitation of 2,000 gallons per day for septic systems, pursuant to N.J.A.C. 7:9A-1.8, to 8,000 gallons per day, as was just adopted at N.J.A.C. 7:14A-22? (1)

RESPONSE: The referenced rules at N.J.A.C. 7:14A-22 are specifically applicable to sewer extensions, treatment plants and pump stations; as such, the 8,000 gallon per day discharge limit in those rules does not apply to individual subsurface sewage disposal systems. At N.J.A.C. 7:14A-1.9, the definition of community onsite subsurface disposal systems establishes limits for design flows of greater than 2,000 gallons per day and/or five realty improvements for systems which are subject to the NJPDES rules. Individual subsurface sewage disposal systems which serve as a single realty improvement and are designed in strict conformance with N.J.A.C. 7:9A can be approved by the administrative authority without the need for a treatment works approval or NJPDES permit. Systems which do not strictly conform to N.J.A.C. 7:9A and/or serve between two and four realty improvements would require a treatment works approval from the Department.

The Department has no plans at this time to raise the threshold limitation from 2,000 gallons per day to 8,000 gallons per day, as adopted at N.J.A.C. 7:14A-22, since the 2,000 gallon per day discharge limitation for community onsite subsurface disposal systems, at N.J.A.C. 7:14A-1.9, has not changed. Facilities with design flows greater than 2,000 gallons per day are required to apply to the Department for NJPDES permits and treatment works approvals.

3. COMMENT: The commenter emphasizes the importance of the proposed amendment to N.J.A.C. 7:9A-1.8 and 3.3(f) allowing the administrative authority jurisdiction to approve alterations to existing malfunctioning community onsite disposal systems, and urges the Department to expedite authorization for approval of such alterations. (1)

RESPONSE: The Department acknowledges the comment in favor of the proposed amendments to N.J.A.C. 7:9A-1.8 and 3.3(f). The Department will process reports of malfunctioning community onsite disposal systems expeditiously in order to allow the administrative authority to issue the appropriate approvals.

4. COMMENT: N.J.A.C. 7:9A-1.8(b) should be modified to reflect N.J.A.C. 7:14A-22.4(a)3, which states that a treatment works approval is not required where the projected flow of the facility is less than 2,000 gallons per day. The number of realty improvements should not be considered in determining what permits are required. (9)

RESPONSE: The Department has not made the suggested change. The referenced rules concerning Treatment Works Approvals, at N.J.A.C. 7:14A-22, do not apply to subsurface sewage disposal systems. A treatment works approval is required for individual subsurface sewage disposal systems which do not strictly conform to N.J.A.C. 7:9A. N.J.A.C. 7:9A-1.8(a) limits individual subsurface sewage disposal systems to those serving single realty improvements. The need for a NJPDES permit is based upon either the design flow of the facility (greater than 2,000 gallons per day) or the number of realty improvements on a single property (five or more realty improvements). The number of realty improvements on a particular site is a valid method of determining whether a treatment works and/or a NJPDES permit will be required since the realty improvement limitation is still a requirement of N.J.A.C. 7:9A-1.8(a) and N.J.A.C. 7:14A-1.9 in the definition of community onsite disposal system.

Subchapter 3. Administration

5. COMMENT: The proposed amendment to N.J.A.C. 7:9A-3.3(c) refers to an expansion or a change in use of a residential dwelling in which the expansion or change exceeds 100 square feet of habitable living space (as defined by the New Jersey State Construction Code). Currently, expansions involving bedrooms must be reviewed. What is the basis for requiring an expansion of the system if the number of bedrooms does not change? How is habitable living space defined under the New Jersey Construction Code, and can this definition be included? What if an expansion is less than 100 square feet yet is considered habitable living space? (6)

6. COMMENT: The proposed amendment at N.J.A.C. 7:9A-3.3(c) indicates that any expansion to a residential dwelling in excess of 100 square feet would require a completely new disposal system, regardless of whether the expansion actually increased the design flow of the residence. The amendment would require a new septic system if the number of bedrooms is constant but the area increases, or a living room or dining room is added. (1)

7. COMMENT: The conditions listed at N.J.A.C. 7:9A-3.3(c)1 and 2 appear to be contradictory. For a residential dwelling which is undergoing

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an expansion which includes an additional bedroom, the expansion cannot be approved by the administrative authority unless the septic system is in conformance with this chapter and provided that the expansion will not increase the design flow. However, the addition of a bedroom will always result in an increase in design flow and therefore could never be approved by the administrative authority. (1)

8. COMMENT: The proposed amendment at N.J.A.C. 7:9A-3.3(c) suggests that an expansion over 100 square feet will require an alteration to the existing septic system in order to bring the system into conformance with N.J.A.C. 7:9A. The previous version of the code required alteration only when the design flow is increased. If it is the intent of the proposed amendment to require alterations only when there is an increase in design flow then the proposed amendments should be changed to clearly reflect that intention, as the section concerning commercial facilities does. (4)

9. COMMENT: It is the commenter's interpretation that the intent of the proposed and existing rule is to regulate potential increases in design flow. The commenter finds no technical basis relating increases in habitable living space beyond 100 square feet to increases in design flow. The regulations should be amended to read: "When an expansion or change in use of a residential dwelling served by an existing individual subsurface sewage disposal system is proposed and such an expansion or change will create habitable living space that may reasonably be used primarily as a bedroom or will result . . . (continue as proposed)". (10)

10. COMMENT: The proposed amendments, at N.J.A.C. 7:9A-3.3(b) and (c), imply that even if the system is altered and enlarged to comply with N.J.A.C. 7:9A the expansion cannot be approved if the design flow of the expansion exceeds the design capacity of the existing system. This section should read ". . . will not exceed the design capacity of the existing or the proposed alteration to the existing system." (8)

11. COMMENT: The proposed amendment at N.J.A.C. 7:9A-3.3(c) should apply to the addition of bedrooms only, not all additions which are greater than 100 square feet of habitable living space. As the proposed amendments now read any applicant planning to increase the habitable living space more than 100 square feet must first alter the existing septic system to meet the requirements of N.J.A.C. 7:9A. (8)

12. COMMENT: It has been our experience, in the administration of the State Uniform Construction Code, that requirements that may be reasonable and cost-effective when applied to new construction can become unreasonable and burdensome if applied to changes in existing buildings. Since the likelihood that the addition of a bedroom will have the effect of making a properly functioning septic system malfunction is slight, such malfunctions can be dealt with on a case-by-case basis, since the private cost that the proposed rule would impose would not appear to be justified by a proportionate public benefit. (3)

RESPONSE TO COMMENTS 5 THROUGH 12 ABOVE: The intent of the proposed amendments at N.J.A.C. 7:9A-3.3(b) and (c) was to allow the continued use of existing individual subsurface sewage disposal systems serving facilities, either commercial or residential, that are being expanded as long as the system is adequately sized to dispose of any increased discharge from the expansion. If the proposed expansion will exceed the design capacity of the existing system, then the system will have to be brought into strict conformance with N.J.A.C. 7:9A.

It is apparent from the comments that the proposed amendment to N.J.A.C. 7:9A-3.3(c), especially the reference to 100 square feet of habitable living space, is confusing. Therefore, in response to the comments received and to address the confusion created by the proposal, the Department has amended N.J.A.C. 7:9A-3.3(c) upon adoption to read: ". . . will exceed 100 square feet of habitable living space (as defined in the New Jersey Uniform Construction Code) and such expansion or change will result in an increase in the volume of sanitary sewage (determined as prescribed at N.J.A.C. 7:9A-7.4), ..."

The Department has also modified the condition at N.J.A.C. 7:9A-3.3(c)2 to read: "The expansion or change of use of the dwelling served does not increase the design flow of the facility **beyond** the design capacity of the existing system." Thus, the rule clearly states that the administrative authority has the authority to approve the continued use of existing systems if the proposed addition to the facility served does not exceed the design capacity of the existing system.

13. COMMENT: The amendment at N.J.A.C. 7:9A-3.3(b) indicates the administrative authority may not approve expansions or changes in use of commercial facilities, if the expansion or change will result in an increase in the design flow of the facility, unless all the listed conditions are met. One of the conditions listed is that the expansion or change will not exceed the design capacity of the existing system. The Department needs to clarify whether the design capacity of the existing system is in reference to the current regulations or the regulations the system was designed under, such as the regulations repealed in 1989. (1)

RESPONSE: The design capacity of the existing system should be that from the original design approval, if it is available. If information concerning the design of the existing system is not available, then the capacity should be determined based upon the current regulations.

14. COMMENT: It is unclear how the 100 square-foot requirement, at N.J.A.C. 7:9A-3.3(c), will affect local enforcement in a township which solely uses septic systems for waste disposal. Currently, if there is a change of use, or an addition to a residence which includes bedrooms, the application is forwarded to the County Health Department for review and approval. This procedure successfully meets the intent of both the Uniform Construction Code, and the County and State septic regulations so the rule should not be amended as proposed. (7)

RESPONSE: The proposed amendment has no effect on the local enforcement of the Standards for Individual Subsurface Sewage Disposal Systems. Applications for expansions to existing facilities should still be forwarded to the administrative authority for review.

15. COMMENT: The proposed rule, at N.J.A.C. 7:9A-3.3(c), which makes a review mandatory if the size of habitable living space is increased by 100 square feet, will create an undue hardship on residents by causing them to spend thousands of dollars on upgrading their systems to meet current health standards. (7)

RESPONSE: The Department disagrees. The administrative authority should review the existing individual subsurface sewage disposal system when the existing facility is being expanded because of the potential for the expansion to exceed the capacity of the existing system. The amendment at N.J.A.C. 7:9A-3.3(c) does not change the existing requirement that the system be brought into strict conformance with N.J.A.C. 7:9A if the proposed expansion will increase the design flow. Instead, the amendment will allow the continued use of the existing system if the design capacity of the existing system is not being exceeded, thereby potentially saving applicants money.

16. COMMENT: The Uniform Construction Code Enforcement Agency of Franklin Township has worked with the County Health Department to successfully reduce red tape, and time delays, and has simplified the process for applicants who are adding bedrooms to their homes. The proposed amendment, which requires a review if the size of habitable living space is increased by 100 square feet, will unnecessarily complicate this process. (7)

RESPONSE: The Department disagrees. The amendment will not require any extra reviews since all such expansions to existing facilities will continue to be reviewed by both the administrative authority and the building inspector for conformance with the appropriate regulations.

17. COMMENT: It will cost more for code enforcement officials to enforce the new regulation which requires a review if the size of habitable living space is increased by 100 square feet. (7)

RESPONSE: The Department disagrees. The code enforcement official should already be reviewing proposed additions to existing facilities for conformance with the Uniform Construction Code, and thus no additional review is required. There should not be any increased cost associated with the amendment.

18. COMMENT: When a building addition other than bedrooms is proposed to living areas, with no increase in calculated design flow, approval is required from the local administrative authority. N.J.A.C. 7:9A-4.8 requires that the individual subsurface sewage disposal system be maintained free of encroachments, which would require that all minimum distance requirements be met. The commenter sees no reason to require a complete septic system update for a proposed dining room when all distances are met. (9)

RESPONSE: The Department agrees that there is no reason to require a system upgrade for a proposed dining room when all distance requirements are being maintained. Therefore, the Department has changed N.J.A.C. 7:9A-3.3(c) on adoption to clarify that the continued use of existing individual subsurface sewage disposal systems to serve facilities which are being expanded can be approved by the administrative authority if the system is sized properly and functioning adequately.

19. COMMENT: The proposed requirement that all aspects of the location, design, construction, installation and operation of existing systems be in conformance with the requirements of this chapter is unreasonable. These requirements could cause the need for an existing system to be expanded to comply with the current disposal area requirements even though the existing system is functioning properly and no

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change of use or increase in flow is proposed. It is therefore requested that the proposed amendments be modified to allow the continued use of existing disposal systems that are functioning properly. (2)

RESPONSE: As stated in the response to Comment 18 above, the proposed amendments do not require the existing system to be expanded if an addition to an existing facility is proposed that will not increase the design flow from the facility. The Department has changed N.J.A.C. 7:9A-3.3(c) on adoption to clarify that the administrative authority can approve the continued use of existing individual subsurface sewage disposal systems to serve facilities which are being expanded if the systems are sized properly and functioning adequately.

20. COMMENT: The phrase "change in the types of wastes discharged," at N.J.A.C. 7:9A-3.3(b) and (c) is ambiguous and should be more clearly defined. (8)

RESPONSE: N.J.A.C. 7:9A-7.3 already defines the types of wastes which are permitted to be discharged to an individual subsurface sewage disposal system. The Department is adding the appropriate cross-references to N.J.A.C. 7:9A-7.3 on adoption of the amendments at N.J.A.C. 7:9A-3.3(b) and (c).

21. COMMENT: N.J.A.C. 7:9A-3.5(c) should be changed to reference N.J.A.C. 7:9A-3.3(d)1 to accurately reflect the section concerning alterations to existing individual subsurface sewage disposal systems. (6)

RESPONSE: The Department agrees and has made the appropriate correction to the cross-reference.

22. COMMENT: N.J.A.C. 7:9A-3.5(c)2xi requires an applicant to show wetlands boundaries or submit evidence of conformance with the Freshwater Wetland Protection Act Rules. Evidence of conformance with the Freshwater Wetlands Protection Act Rules should only be required when there is evidence of freshwater wetlands or transition areas within 150 feet of the proposed septic system. This section should be amended to read "... evidence of compliance with N.J.A.C. 7:7A as provided pursuant to N.J.A.C. 7:9A-4.7(b) or (c)." (8)

RESPONSE: The Department agrees and upon adoption has changed N.J.A.C. 7:9A-3.5(c)2xi to reference N.J.A.C. 7:9A-4.7(b) or (c).

Subchapter 4. Site Evaluation and System Location

23. COMMENT: The Department should provide a cross reference to both aid and reinforce compliance with the current Freshwater Wetland Regulations where septic systems are altered or repaired either within a wetland or transition area. The Department should also add a paragraph at N.J.A.C. 7:9A-4.7 which reinforces the requirement that septic systems altered or repaired within a wetland or transition area must be permitted through a General Permit No. 25. (10)

RESPONSE: As explained in the response to Comment 22 above, the existing rule and the amendments at N.J.A.C. 7:9A-4.7 specifically reference the requirements of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A. Septic systems must be in compliance with all provisions of the Freshwater Wetlands Protection Act and the rules promulgated thereunder.

Subchapter 6. Permeability Testing

24. COMMENT: The results of acceptable permeability tests should be restricted to rates of one to two inches per hour (K-rates of K2/K3) or faster. (5)

RESPONSE: The Department is not aware of any technical basis for considering permeability rates between 0.2 and one inch per hour to be unacceptable for disposal field design purposes, but will take into consideration such information if the commenter can provide it.

Subchapter 7. General Design and Construction Requirements

25. COMMENT: The Department should give consideration to changing the design flow criteria to be more consistent with the Treatment Works Approval regulations at N.J.A.C. 7:14A-23. Specifically, the Department responded to a comment, at 26 N.J.R. 2428, Response to Comment 113, by stating that the 0.125 gallons per square foot per day for office use is excessively conservative. (4)

RESPONSE: The Department does not believe that the 0.125 gallon per day design flow criterion for office use is too conservative for designing septic systems under these rules as opposed to the treatment works regulated under N.J.A.C. 7:14A-23. Septic systems have to be able to adequately dispose of all the sanitary sewage generated by the facility served. While the suggested change makes sense for the design of sanitary sewer lines, septic systems do not have the same capacity to adequately handle surges and peaks in the discharge of sewage. Therefore, septic system design is limited by such systems' ability to adequately dispose of the maximum anticipated daily discharge from the facility served.

Subchapter 10. Disposal Fields

26. COMMENT: Although no amendments to subchapter 10 are proposed, there is an urgent need to reconsider the specifications for select fill utilized in disposal beds. (2)

27. COMMENT: The standards for textural analysis of select fill and select fill systems in subchapter 10 should be more restrictive. (5)

28. COMMENT: The percentage of fine grained particles in the select fill specification, at N.J.A.C 7:9A-10.1(f)4, used for the zone of treatment is of great concern. The percentage of very fine sand should be excluded in determining if the fill material meets the required specification since excessive amounts of very fine sand may lead to premature failure of the system (10)

RESPONSE TO COMMENT 26 THROUGH 28 ABOVE: The Department has discussed possible problems with the specifications for select fill with engineers, builders and administrative authorities, but has yet to receive any documented evidence that the specification for select fill has been directly responsible for any system malfunction. The Department is continuing to look into this issue and may propose changes to the select fill specifications in the future if documentation is presented which indicates that such changes are necessary.

29. COMMENT: N.J.A.C. 7:9A-10.4 should be amended to more clearly establish when an interceptor drain is required. The way this section is currently worded it is not clear that interceptor drains are only required when there is a perched water table. (10)

RESPONSE: The Department appreciates the comment and will take it into consideration when proposing amendments to these rules in the future.

Subchapter 12. Operation and Maintenance

30. COMMENT: The Department should be commended for providing direction in the disposal of excavated components and residuals from abandoned systems. (10)

RESPONSE: The Department acknowledges this comment in support of the rule.

31. COMMENT: N.J.A.C. 7:9A-12.8(a) should be amended to read "the administrative authority or the plumbing inspector shall ensure the system is abandoned." Such a change would give the municipalities and counties the option of ensuring the abandonment of the septic system either by their own staff or by the plumbing inspector. (5)

RESPONSE: The inspection of a septic system abandoned due to connection to a sanitary sewer line is properly the responsibility of the plumbing inspector, who must also inspect the connection to the sanitary sewer line. Nothing in the amendment limits the administrative authority from also inspecting the abandoned septic system; however, the Department believes that such an inspection by the administrative authority is a duplication of effort.

32. COMMENT: The proposed amendment to N.J.A.C. 7:9A-12.8(b) references abandoned systems. Under the Solid Waste Management Act, septic waste is addressed as a liquid which must be handled by an approved waste hauler. How does the Department suggest the solid from the septic disposal field be regulated? It is difficult to get a transfer and disposal facility to accept such material. Can this waste be used as fill off site? (6)

33. COMMENT: Specific definitions and steps for the disposal of excavated select fill are unclear in the regulation and in N.J.S.A. 13:1E-1 et seq. An interpretation sheet or specific selections in N.J.S.A. 13:1E-1 et seq. should be highlighted so as to be user-friendly. Various situations have occurred in this municipality as to make disposal of fecal contaminated select fill an expensive and burdensome proposition for homeowners. Further investigation should be undertaken in order to make clear the disposal options for select fill. (5)

34. COMMENT: The proposed amendment references the Solid Waste Management Act for the disposal of residuals from abandoned septic systems. In most instances residuals from abandoned septic systems are left in place or buried on site. If these practices are not allowed under the Solid Waste Management Act, then the Department should provide better guidance for the disposal of residuals from abandoned septic systems. (4)

RESPONSE TO COMMENTS 32 THROUGH 34 ABOVE: The proposed amendments do not impose any new requirements concerning the disposal of residuals of abandoned septic systems which have been

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excavated. The Department included the reference to the requirements of the Solid Waste Management Act because it governs the disposal of these residuals. Abandoned septic systems which are not being excavated must have all tanks pumped and backfilled with sand or gravel. Septic systems, or portions thereof, which are being excavated must be either disposed of onsite or hauled to a proper disposal facility.

35. COMMENT: A new section should be added when the code is amended to address additions which expand the footprint of the facility, since the proposed addition may encroach upon the existing individual subsurface sewage disposal system in case of a future malfunction. (8)

RESPONSE: The Department disagrees that such a change is necessary. The rule concerning the area reserved for sewage disposal, at N.J.A.C. 7:9A-4.8, already requires that the area of the system be kept free from encroachments from additions to the main building, driveways and accessory buildings.

36. COMMENT: The operation and maintenance subchapter should be reinstated as an optional provision for administrative authorities who need or desire to periodically check on the functioning of septic systems in their jurisdiction. The fee for a septic tank management license/license to operate needs to be higher than $5.00 per year. The fee should be at least $25.00 per year and the State statute should be amended to reflect that. (5)

RESPONSE: The Department will consider reinstating mandatory operation and maintenance provisions if a means of implementation can be found which is not overly burdensome to either the administrative authority or the system owner. Until such time as the Department does reinstate provisions for mandatory operation and maintenance, each municipality and/or county has the option of passing an ordinance requiring mandatory operation and maintenance of septic systems. The statute concerning the maximum $5.00 per year fee for a license to operate a septic system can only be changed by the Legislature.

37. COMMENT: The State of New Jersey needs to adopt a revolving loan program to help New Jersey residents afford the repairs of some septic system failures. The State of Washington has such a program which has worked well for several years. The interest on the repayment of these loans is anywhere from zero percent for a five-year loan to five percent for a 15 to 20 year loan. (5)

RESPONSE: The Department acknowledges the comment concerning a revolving loan program to help defray the cost of correcting septic system malfunctions. However, such a program would have to be authorized by statute, since it would require a significant financial commitment by the State.

Summary of Agency-Initiated Changes:

To reflect internal Departmental reorganization, N.J.A.C. 7:9A-3.9(c) has been changed upon adoption to adequately reflect the address of the Unit tasked with the implementation of N.J.A.C. 7:9A.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:9A.

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]*):

7:9A-1.4 Practice where rules do not govern

The Commissioner, or any other appropriate management employee within the Department, shall exercise his or her discretion in respect to any matters not governed by this chapter.

7:9A-1.8 Limitations

(a) (No change.)

(b) When an individual subsurface sewage disposal system exceeds the limitations in (a) above, a treatment works approval issued by the Department will be required, except under the circumstances specified in N.J.A.C. 7:9A-3.3(f), and a NJPDES permit may also be required.

(c) (No change.)

7:9A-2.1 Definitions

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

. . .

"Wetland" means any area inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and which under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. Wetlands generally include swamps, marshes, bogs and similar areas.

. . .

7:9A-3.3 Existing systems

(a) (No change.)

(b) When an expansion or a change in use of a commercial building or facility served by an existing individual subsurface sewage disposal system is proposed and such expansion or change will result in an increase in the volume of sanitary sewage (determined as prescribed at N.J.A.C. 7:9A-7.4) or a change in the type of wastes discharged ***(see N.J.A.C. 7:9A-7.3)***, the administrative authority shall not approve such an expansion or change unless all of the following conditions are satisifed:

1. All aspects of the location, design, construction, installation and operation of the existing system are in conformance with the requirements of this chapter or are altered so that they will be in conformance with the requirements of this chapter;

2. The expansion or change of use of the building or facility served will not exceed the design capacity of the existing system; and

3. It is demonstrated to the satisfaction of the administrative authority that the existing system is not malfunctioning.

(c) When an expansion or a change in use of a residential dwelling served by an existing individual subsurface sewage disposal system is proposed and such an expansion or change will exceed 100 square feet of habitable living space (as defined in the New Jersey Uniform Construction Code, N.J.A.C. 5:23) ***and such expansion or change will result in an increase in the volume of sanitary sewage (determined as prescribed at N.J.A.C. 7:9A-7.4)*** or will result in a change in the type of wastes discharged ***(see N.J.A.C. 7:9A-7.3)***, the administrative authority shall not approve such an expansion or change unless all of the following conditions are satisfied:

1. All aspects of the location, design, construction, installation and operation of the existing system are in conformance with the requirements of this chapter or are altered so that they will be in conformance with the requirements of this chapter;

2. The expansion or change of use of the dwelling served does not increase the design flow of the dwelling*[, or will not exceed]* ***beyond*** the design capacity of the existing system; and

3. It is demonstrated to the satisfaction of the administrative authority that the existing system is not malfunctioning.

(d) Alterations made to a system for reasons other than a change of use or expansion as described in (b) and (c) above may be approved by the administrative authority provided that both of the following conditions are met:

1. If the scope of the alteration is such that it constitutes the practice of professional engineering according to N.J.S.A. 45:8 and the rules adopted pursuant to same, then such alterations shall be made in conformance with plans and specifications signed and sealed by a licensed professional engineer; and

2. Alterations are made in such a way that those components of the system altered are in conformance with the requirements of this chapter or are closer to being in conformance with this chapter than the original components prior to the alteration.

(e) When alterations are made to correct a malfunctioning system, the alterations shall be made in conformance with (d) above and in a manner that will eliminate the cause of the malfunction and which, with proper operation and maintenance, will not result in future malfunctions.

(f) Alterations to an existing malfunctioning community onsite subsurface disposal system, as defined in N.J.A.C. 7:14A-1.9, may be approved by the administrative authority pursuant to the provisions of this chapter upon written authorization of such by the Department.

Recodify existing (d)-(e) as (g)-(h) (No change in text.)

(i) A person who discharges sanitary wastes by means of an existing community onsite subsurface disposal system, as defined in N.J.A.C. 7:14A-1.9, who did not apply to the Department for a NJPDES permit by August 21, 1991 is in violation of the Water Pollution Control Act, and shall apply for such a permit immediately.

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7:9A-3.5 Permit to construct or alter

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

(c) The applicant shall submit a complete, accurate and properly executed application to the administrative authority. All soil logs, soil testing data, design data and calculations, plans and specifications, and other information submitted in connection with the subsurface sewage disposal system design shall be signed and sealed by a licensed professional engineer except where N.J.A.C. 7:9A-*[3.3(c)1]***3.3(d)1*** allows otherwise. The application shall include the following information:

1. (No change.)

2. A site plan, prepared in accordance with N.J.A.C. 13:40-7 and drawn at a scale adequate to depict clearly the following features within a 150 foot radius around the proposed system:

i.-x. (No change.)

xi. State approved boundaries of any wetland areas or transition areas within the boundaries of the property or within 150 feet of the area of the proposed system. Alternatively, the applicant may submit evidence of compliance with the requirements of N.J.A.C. 7:7A as provided pursuant to N.J.A.C. 7:9A-4.7***(b) or*** (c).

3.-8. (No change.)

(d) (No change.)

7:9A-3.9 Treatment works approval

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

(c) Applications for treatment works approval shall be made on forms available from the Department and shall be accompanied by the required application fee. Application forms and instructions regarding administrative and technical submission requirements may be obtained by contacting the *[Subsurface Disposal Unit of the Land Use Regulation Program]* ***Department*** at the following address:

Department of Environmental Protection
*[Land Use Regulation Program
Subsurface Disposal Unit
CN 401]*
***Division of Water Quality**
Bureau of Operational Groundwater Permits
CN-209*
Trenton, N.J. 08625*[-0401]*

7:9A-4.7 Freshwater wetlands

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

(c) Evidence that the applicant has complied with applicable State freshwater wetland rules shall consist of any of the following documents:

1. A "letter of interpretation" issued by the Department, indicating that the proposed development is not located in wetlands, waters or transition areas;

2. A freshwater wetlands statewide general or individual permit, or a transition area waiver, issued by the Department for the wetlands or transition area aspects of the proposed development; or

3. A written determination from the Department that the proposed development is not subject to regulation under the Freshwater Wetlands Protection Act.

(d) (No change.)

7:9A-7.4 Volume of sanitary sewage

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

(d) The criteria listed below are minimum standards for average facilities of the categories listed. In cases where a facility does not fall within any of the categories, the administrative authority may approve the use of other documented criteria, such as actual water data for the facility or other similar facilities, provided that the value used for design is at least 50 percent greater than the average daily volume of sewage.

Type of Establishment	Method of Estimation (gallon per user or gallon per unit per day)
1.-6. (No change.)	
7. Beauty parlors and salons	120 gal/day/sink

Recodify existing 7.-43. as 8.-44. (No change in text.)

7:9A-12.8 Abandoned systems

(a) When it is necessary to abandon a system or components of a system in place for any reason other than connection to a sanitary sewer line, all septic tanks, dosing tanks, seepage pits, dry wells and cesspools which are to be abandoned shall be emptied of wastes and removed or filled completely with gravel, stones or soil material in a manner which is acceptable to the administrative authority. In cases where the individual subsurface sewage disposal system, or components thereof, is being abandoned due to the connection of the facility to a sanitary sewer line, the local plumbing inspector shall ensure the system is abandoned in accordance with the requirements of this section.

(b) When components or residuals, such as gravel filter material, fill material or soil from an abandoned individual subsurface sewage disposal system are removed from the ground, such components or residuals shall be managed as follows:

1. Off-site disposal of components and residuals from an abandoned system shall be managed in accordance with the State Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the rules promulgated pursuant thereto; or

2. On-site management of excavated components and residuals from abandoned systems shall be in accordance with the State Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the rules promulgated pursuant thereto, and in a manner which is acceptable to the administrative authority.

(a)

WATER SUPPLY ELEMENT

Safe Drinking Water Act Rules

Readoption: N.J.A.C. 7:10

Proposed: July 5, 1994 at 26 N.J.R. 2720(a).

Adopted: August 25, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: August 25, 1994 as R.1994 d.482, **without change.**

Authority: N.J.S.A. 13:1D-1 et seq., 58:12A-1 et seq., 58:11-64 et seq., 58:11-23 et seq., 58:11-9.1 et seq., and 58:10A-1 et seq.

DEPE Docket Number: 27-94-06/38.

Effective Date: August 25, 1994.

Expiration Date: December 31, 1995.

Summary of Public Comments and Agency Responses:

On July 5, 1994 the New Jersey Department of Environmental Protection (Department) proposed to readopt without change its rules governing the implementation and enforcement of the Safe Drinking Water Act, N.J.A.C. 7:10. Notice of the proposal was also published on July 1, 1994 in the Bergen Record, the Trenton Times and the Press of Atlantic City.

The Department has established a December 31, 1995 expiration date for this chapter because it is in the process of substantially revising these rules. The Department anticipates proposing the revised rules in the fall of 1994.

The following persons submitted written comments within the public comment period, which closed on August 4, 1994:

Company/Individual—City, State

1. D'Aries, Ralph—Sparta, NJ
2. Hoven, Donald—Harrington Park, NJ
3. Adens, Darleen R.—Mays Landing, NJ
4. Albanese, Michelle—Belcoville, NJ
5. Amardo, Mary—Mays Landing, NJ
6. Avdo, Mae—Belcoville, NJ
7. Bank of New York—Mays Landing, NJ
8. Bender, Annmarie—Belcoville, NJ
9. Bergman, Priscilla Gay—Belcoville, NJ
10. Boone, Anne L.—Belcoville, NJ
11. Branius, Caryn—Mays Landing, NJ
12. Bullock, Mucebah—Mays Landing, NJ
13. Camp, Ellen—Belcoville, NJ

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14. Capelli, Claudia—Belcoville, NJ
15. Cappetola, Joanne—Mays Landing, NJ
16. Cerullo, Frank & Renee—Belcoville, NJ
17. Conoer, Ernest—Mays Landing, NJ
18. Corner, Lilly—Belcoville, NJ
19. Corso, Joseph & Bernice—Belcoville, NJ
20. Daisey, Patricia—Belcoville, NJ
21. Dean, William—Belcoville, NJ
22. Deault, Melvin—Mays Landing, NJ
23. DeGeorge, Sandy—Mays Landing, NJ
24. Delaney, Susan E.—Mays Landing, NJ
25. Delany, Gerry—Belcoville, NJ
26. Denney, Tolbert—Belcoville, NJ
27. Devlin, Patricia—Mays Landing, NJ
28. DiBenedetto, Angelina—Belcoville, NJ
29. Didenko, Ludmilla—Belcoville, NJ
30. Didenko, Ludmilla—Mays Landing, NJ
31. Doerr, John—Belcoville, NJ
32. Doughty, Mack—Belcoville, NJ
33. Doughty, Rachel B.—Belcoville, NJ
34. Duda, Kathleen—Belcoville, NJ
35. Duffy, Mike—Belcoville, NJ
36. Dungan, Donna—Belcoville, NJ
37. Ellis, Mary—Belcoville, NJ
38. Farrell, Sr., Frank W.—Belcoville, NJ
39. Fiori, Juanita—Belcoville, NJ
40. Ford, Connie—Mays Landing, NJ
41. Forney, L.—Mays Landing, NJ
42. Fragapane, Jr., Frank—Belcoville, NJ
43. Gartland, Gary—Mays Landing, NJ
44. Germanis, Louis & Donna—Belcoville, NJ
45. Giordano, John A.—Mays Landing, NJ
46. Goldsmith, Heather N.—Mays Landing, NJ
47. Greenfield, Lauretta—Mays Landing, NJ
48. Groce, Colleen—Mays Landing, NJ
49. Hale, S.E.—Belcoville, NJ
50. Hall, Vernelia—Belcoville, NJ
51. Harris, Noah P.—Belcoville, NJ
52. Henderson, Johnny L.—Mays Landing, NJ
53. Henry, Ernest—Belcoville, NJ
54. Hirez, Nick—Belcoville, NJ
55. Howard, Richard—Belcoville, NJ
56. Hughes, Gloria—Belcoville, NJ
57. Hugh, Chad—Belcoville, NJ
58. Hyman, Louise—Belcoville, NJ
59. Iverson, Ruth—Belcoville, NJ
60. Jordan, Steve & Sheryl—Belcoville, NJ
61. Kaelin, Robert—Belcoville, NJ
62. Kayter, Richard—Mays Landing, NJ
63. Keller, Bill—Belcoville, NJ
64. Kelley, Kim—Mays Landing, NJ
65. Kiniry, Agnes—Mays Landing, NJ
66. Kocap, Jeanine—Mays Landing, NJ
67. Kotansky, Peggy—Belcoville, NJ
68. Kotansky, Tom—Mays Landing, NJ
69. Kresser, Virginia—Mays Landing, NJ
70. Laigaie, Cynthia—Belcoville, NJ
71. Lawrence, Mr. & Mrs. Louis—Mays Landing, NJ
72. Lawrence, Steve—Belcoville, NJ
73. Lee, Kao—Weymouth, NJ
74. Leyrer, Lorreta—Belcoville, NJ
75. Lilly, Roger S.—Mays Landing, NJ
76. Llunus, Rebecca—Belcoville, NJ
77. Long, Cheryl A.—Belcoville, NJ
78. Macunber, Chris—Weymouth Twp., NJ
79. Mallick, Claresa—Belcoville, NJ
80. Mariner, Andrea—Belcoville, NJ
81. Mariner, Andrea Margeret—Mays Landing, NJ
82. Marsh, Jr., Roland—Belcoville, NJ
83. Marsh, Sr., Roland—Belcoville, NJ
84. Marsh, William—Belcoville, NJ
85. Martindale, R.—Belcoville, NJ
86. Martin, Margie—Belcoville, NJ
87. Matlack, Joanne—Mays Landing, NJ
88. Mazza, Anthony N.—Belcoville, NJ
89. Mazza, Bernice—Belcoville, NJ
90. McGonigal, Richard—Belcoville, NJ
91. McHenry, Mr. & Mrs. Joseph—Mays Landing, NJ
92. Merrill, Angel—Belcoville, NJ
93. Merrill, Dorothy M.—Belcoville, NJ
94. Merrill, Dorothy M.—Belcoville, NJ
95. Morrell, Barry C.—Mays Landing, NJ
96. Morris, Brian—Belcoville, NJ
97. Natoli, Debra—Belcoville, NJ
98. Noll, Juanita—Mays Landing, NJ
99. Novack, Mr. & Mrs.—Mays Landing, NJ
100. O'Donnell, Andrew T.—Belcoville, NJ
101. Ogden, Chester M.—Belcoville, NJ
102. O'Sullivan, Eileen—Mays Landing, NJ
103. Petrone, Mr. & Mrs. Joseph—Mays Landing, NJ
104. Piacentino, Brenda—Belcoville, NJ
105. Pierce, Thomas & Tina—Mays Landing, NJ
106. Pileggi, Linda A.—Belcoville, NJ
107. Rany, Joe—Belcoville, NJ
108. Reed, Elizabeth—Mays Landing, NJ
109. Rocap, Jeanine—Belcoville, NJ
110. Rodio, Dina—Mays Landing, NJ
111. Roman, Robin—Mays Landing, NJ
112. Ryan, Micheal—Belcoville, NJ
113. Salvaryn, Diane—Belcoville, NJ
114. Scharfetter, B. Jane—Belcoville, NJ
115. Scheeler, John & Rose Marie—Belcoville, NJ
116. Schiaro, Al & Jacqueline—Belcoville, NJ
117. Schmid, Jr., Victor—Belcoville, NJ
118. Schneider, Donna—Belcoville, NJ
119. Schneider, Sr., Victor—Mays Landing, NJ
120. Schorr, Larry—Belcoville, NJ
121. Schreibo, Leah—Mays Landing, NJ
122. Seeger, Kevin—Belcoville, NJ
123. Sendrick, Michael & Gail—Belcoville, NJ
124. Severns, Shari—Belcoville, NJ
125. Shepherd, Joan—Mays Landing, NJ
126. Snyder, Martin—Mays Landing, NJ
127. Sturm, Cary—Mays Landing, NJ
128. Swansen, John—Mays Landing, NJ
129. Tangvay, Bill & Miriam—Mays Landing, NJ
130. Taylor, William—Mays Landing, NJ
131. Thompson, Jeff—Belcoville, NJ
132. Turner IV, Wilson Moore—Mays Landing, NJ
133. Turner, Mark—Belcoville, NJ
134. Unclear—Mays Landing, NJ
135. Valquil, Angel—Belcoville, NJ
136. Vitale, Elizabeth—Belcoville, NJ
137. Wade, John—Belcoville, NJ
138. Walker, Karin—Mays Landing, NJ
139. Welsh, Grace—Mays Landing, NJ
140. Wenser, Andrew—Belcoville, NJ
141. Wescott, Dan—Belcoville, NJ
142. Wesson, Catherine—Mays Landing, NJ
143. Wilkinson, Angelina—Belcoville, NJ
144. Wilkinson, Angie—Belcoville, NJ
145. Willhan, William—Mays Landing, NJ
146. Wolff, Charles—Belcoville, NJ
147. Zamorano, Carmen—Belcoville, NJ

The comments and the Departments' responses are summarized below.

1. COMMENT: Ralph J. D'Aries, Health Officer of the Township of Sparta, asked whether the Department changes the maximum contaminant level (MCL) of fluoride when there are changes in average air temperature and will it be different from one day to another?

RESPONSE: The United States Environmental Protection Agency (USEPA) revised the MCL for fluoride in 1986. The new MCL for fluoride is four mg/l and is not affected by air temperature and does not change from one day to another. New Jersey adopted the Federal MCL for fluoride by reference. N.J.A.C. 7:10-5.3 will be changed to make it agree with the Federal MCL in the Department's revised Safe Drinking Water Act regulations to be proposed this fall.

2. COMMENT: Donald Hoven, Director Regulatory Affairs, Hackensack Water Company commented about certain provisions of the physical connection rules at N.J.A.C. 7:10-10.

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The first issue raised was that the provisions regarding installation of an approved physical connection in instances of a dual source of water (one from an unapproved supply) entering the same building require installation of devices to prevent backflow; however, installations of backflow preventers are not required in instances of other hazardous cross-connections where an unapproved water supply is not present. A draft of the proposed revisions of the Safe Drinking Water Act Rules provides a definition of hazardous facilities, but leaves to the water purveyor the option of developing and implementing a cross connection control policy for these facilities.

Hackensack Water Company has maintained a dual source and hazardous facilities cross connection program, but finds it inefficient and confusing to business and industry. Mr. Hoven suggested that N.J.S.A. 58:11-9.1 et seq., be repealed or at least amended to give water purveyors authority over the physical connection program. The water purveyors should be allowed to implement the physical connection program so long as their program includes all the Department's requirements for a physical connection program.

The second issue raised was the lack of a defined certification process for backflow testers. Without a comprehensive certification program as found in other states, the businesses, which have been required to install backflow devices either by the Department or the water utility, have difficulty finding qualified people to conduct the required tests on their devices. This has led to exorbitant fees being charged by the few testers who are available. Therefore, the Department should establish a certification process for backflow testers. Also, the quarterly testing of dual source physical connections is excessive and creates an undue financial burden for New Jersey businesses. It is suggested that this testing requirement by changed to annually, instead of quarterly.

RESPONSE: The Department appreciates the commenter's concerns and will take them into consideration as it prepares to propose the revisions to N.J.A.C. 7:10. The Department notes, however, that only the Legislature can repeal or amend N.J.S.A. 58:11-9.1.

3. COMMENT: The Department received a form letter from 145 individuals objecting to the provision of N.J.A.C. 7:10-11.8 which requires each water supply system to provide storage. The commenters feel that this general requirement does not take into consideration the special situation and circumstances of some bulk purchase systems, such as the Weymouth Township MUA, which buys water from the Hamilton Township Municipal Utilities Authority.

RESPONSE: The current storage rule at N.J.A.C. 7:19-6.7 does contain provisions for the substitution of interconnections for storage; in addition, the Department has a storage waiver program that can provide relief for small systems. However, Weymouth Township MUA does not qualify for a waiver because it does not have a backup source or backup interconnection. The Weymouth Township MUA is served only by a single interconnection with the Hamilton Township MUA which is over 80 years old and passes under a state highway. In case of a main break under or around the highway, the Weymouth Township MUA customers may be without water for an extended period of time. The Department strongly believes that this emergency situation, which can happen any time, must be averted by either providing a second interconnection or a storage facility. The Department does not anticipate changing these regulations in such a manner as would affect the situation in Belcoville or in any other community where public health and welfare may be compromised.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:10.

(a)

OFFICE OF AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Vehicular Fuels

Adopted Amendments: N.J.A.C. 7:27-25.1, 25.8, 25.9 and 25.11

Proposed: February 22, 1994 at 26 N.J.R. 1048(a).

Adopted: August 25, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: August 25, 1994 as R.1994 d.483, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with proposed N.J.A.C. 7:27-25.3(c) and 25.3(d) not adopted at this time.**

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically 26:2C-8.

DEP Docket Number: 05-94-01/94.

Effective Date: September 19, 1994.

Operative Date: October 24, 1994.

Expiration Date: Exempt.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting herein certain portions of the amendments to N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels, and hereinafter referred to as "subchapter 25" proposed on February 22, 1994 at 26 N.J.R. 1048(a). Final Departmental action on the remainder of the proposed amendments to N.J.A.C. 7:27-25.3(c) and (d) is being reserved at this time.

The portions of the proposed amendments being adopted herein add a definition of the term "National Ambient Air Quality Standard (NAAQS)" at N.J.A.C. 7:27-25.1 and revise the labeling requirements at N.J.A.C. 7:27-25.8 to relieve wholesale purchaser-consumers of the obligation to post a label on their gasoline pumps during the oxygen program control periods. The portions on which final action is being reserved at this time, proposed at N.J.A.C. 7:27-25.3(c) and 25.3(d), pertain to the amendments to suspend the oxygenated fuels program in New Jersey as of January 1, 1995. This suspension was proposed in anticipation that the United States Environmental Protection Agency (EPA) would redesignate as being in attainment of the NAAQS for carbon monoxide (CO) those areas in New Jersey currently designated by the EPA as not meeting the standard. To date, however, the EPA has not redesignated those areas in the Southern oxygen program control area for which redesignation requests were submitted, and the Department has not at this time submitted any requests for redesignation of the nonattainment areas in the Northern oxygen program control area.

Should such redesignation occur and should the Department proceed to adopt the proposed amendments to N.J.A.C. 7:27-25.3(c) and 25.3(d) at a future date, it will do so by subsequent adoption notice in the New Jersey Register. If no action is taken on the proposed amendments by February 21, 1995, the currently pending proposal of these amendments will expire. Unless and until the Department adopts these proposed amendments which would suspend the oxygenated fuels program and the adoption becomes operative, the previously promulgated oxygenated fuels program, including its 2.7 percent by weight oxygen content standards for gasoline for both the Northern oxygen program control area and the Southern oxygen program control area, shall remain in effect.

A public hearing was held on March 25, 1994 to provide interested parties the opportunity to present testimony on the proposed amendments to subchapter 25 and on the CO SIP—Redesignation and Maintenance Plans for both Camden County and the Nine Not Classified Areas. The comment period closed on April 8, 1994. The Department received written and oral testimony on the proposed amendments to subchapter 25 as well as on the CO SIP—Redesignation and Maintenance Plans for both Camden County and the Nine Not Classified Areas. Ten persons presented written testimony, only. Six persons presented oral comments, only. One person presented both written and oral comments. The commenters were as follows:

1. Thomas M. Allen, P.E., New York State Department of Environmental Conservation

2. Pamela Barsam-Brown, New Jersey Coalition Against Aircraft Noise

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3. George Bogan, Oxybusters
4. Mary Bowers, citizen
5. Thomas W. Burrows, citizen
6. Stephen G. Carrellas, P.E., National Motorists Association, New Jersey Chapter
7. Carol Coles, citizen
8. Marie Curtis, New Jersey Environmental Lobby
9. Janet & Mario DeMartin, citizens
10. Ren Franse, citizen
11. Nana K. Galante, citizen
12. Barry Grossman, Oxybusters
13. Kimberly Holz, on behalf of gasoline pumpers at Mobil Mart
14. Karen J. Klitzman, New York Mercantile Exchange
15. Dr. Nina Levinson, citizen
16. Dennis McCarthy, citizen
17. George McMahon, Fuelon International
18. Conrad Simon, United States Environmental Protection Agency, Region II

The number(s) in parentheses after each comment corresponds to the commenter numbers above to indicate the person(s) who submitted the comment. The listed comments include both the comments relating to the proposed amendments to N.J.A.C. 7:27-25 and to the CO SIP—Redesignation and Maintenance Plans for both Camden County and the Nine Not Classified Areas.

N.J.A.C. 7:27-25 General Comments

1. COMMENT: A number of commenters support the Department's proposed amendments to suspend the oxygenated fuels program. The commenters expressed concerns that the use of oxygenated gasoline adversely impacts human health and significantly decreases vehicle fuel economy. Several commenters also expressed concerns regarding the increased cost to the motoring public of oxygenated gasoline. (3)(4)(5)(7)(9)(10)(11)(12)(13)(16)

RESPONSE: The Department acknowledges the commenters' support for suspension of the oxygenated fuels program. However, as neither the Southern oxygen program control area nor the Northern oxygen program control area has as yet been redesignated as being in attainment of the NAAQS for CO, the Clean Air Act mandate that the State have an oxygenated fuels program for these areas remains in effect. Therefore, the Department has determined to defer final action on the proposed amendments to suspend the oxygenated fuels program in these areas at this time.

To the Department's knowledge, no health studies to date have conclusively demonstrated adverse health impacts due to oxygenated gasoline. The Department remains willing to review and consider any further scientific information provided relevant to this matter.

With regard to the effect on fuel economy of oxygenated gasoline, the Department recognizes that the use of oxygenated gasoline results in some loss of fuel economy. The Auto/Oil Air Quality Improvement Research Program, a cooperative research program initiated by the three major domestic automobile-manufacturing companies and four petroleum companies, has tested vehicles using oxygenated fuels. Its report entitled Fuel Composition Effects on Automotive Fuel Economy—Auto/Oil Quality Improvement Research Program, which was presented at the International Congress and Exposition held in Detroit, Michigan (March 1-5, 1993), indicated a decrease, on the average, of one to three percent in fuel economy directly attributable to the use of oxygenated fuels. It is important to note, so as not to overstate the effect of oxygenated gasoline on fuel economy, that some loss of fuel economy due to other factors is at times incorrectly attributed to the oxygenation of gasoline. These factors include differences in fuel formulation in winter months as opposed to summer months, the effect of colder ambient temperatures in winter months, and the condition of a vehicle. In combination, these factors can cause a decrease in fuel economy during the winter months of approximately five to 20 percent.

The Department also recognizes the cost of oxygenated fuels is higher. The Department's Office of Energy estimated the additional cost of oxygenated gasoline to be $0.01 per gallon for the 1993-1994 oxygenated fuels season. However, when compared to the costs incurred by industries in complying with rules designed to reduce emissions that lead to the formation of ground level smog or ozone, such as the Volatile Organic Compounds Reasonably Available Control Technology (VOC RACT) rule, the cost of using oxygenated fuels as a control strategy to reduce CO emissions from mobile sources is shown to be a cost effective emissions-reducing measure. For example, this additional cost to motorists using oxygenated fuels of $0.01 per gallon represents a cost of approximately $180.00 per ton of CO pollutant reduced. The Department estimates that the cost to industry of using the VOC RACT strategy as an ozone control measure to reduce VOC emissions will be between $2,000 and $10,000 per ton of VOC pollutant reduced.

2. COMMENT: The EPA and the Department should have conducted tests to assess the health impacts of oxygenates in gasoline prior to implementation of the oxygenated fuels program. (5)

RESPONSE: A number of health studies were conducted concerning the use in gasoline of the most commonly used oxygenate, MTBE, both prior to the implementation of the oxygenated fuels program on November 1, 1992 and during the 1992-1993 oxygenated fuels program season. The results of the MTBE studies conducted during the 1992-1993 season by the National Center for Environmental Health of the Center for Disease Control and Prevention (CDC), the Environmental and Occupational Health Sciences Institute (EOHSI), and the EPA were published by the EPA on November 1993 in a document entitled Assessment of Potential Health Risks of Gasoline Oxygenated with Methyl Tertiary Butyl Ether (MTBE). The results from these studies show no statistically significant relationship between exposure to MTBE and adverse health effects. A copy of this report can be obtained by writing to:

United States Environmental Protection Agency
Field Operations Support Division
401 M. Street, S.W.
6406J
Washington, D.C. 20460.

Also, in 1987 an enforceable consent agreement was signed by the EPA and several petrochemical companies to conduct extensive testing of MTE under Section 4 of the Toxic Substance Control Act (TSCA). A MTBE Task Force was formed to study this issue. The results from the health studies conducted by this task force also show no adverse long-term effects from exposure to MTBE in gasoline. The numerous studies published by this group are kept in the EPA TSCA Docket #52098. Copies of the studies can also be obtained by writing to:

United States Environmental Protection Agency
Non-Confidential Information Center (7407)
401 M. Street, S.W.
Washington, D.C. 20460.

3. COMMENT: The commenter questions whether the EPA has conducted tests to evaluate health effects associated with exposure to reformulated gasoline. (5)

RESPONSE: The Federal Clean Air Act (CAA) mandates the use of reformulated gasoline because such use will significantly reduce emissions of toxic air pollutants and pollutants which form ground level smog or ozone and thus should have a positive impact on human health. The EPA has conducted tests to quantify the health impacts of reformulated gasoline and its reductions in air toxics and ozone. The findings of these studies are in an EPA technical support document entitled "Final Regulatory Impact Analysis for Reformulated Gasoline." A copy of this document can be obtained by writing to:

United States Environmental Protection Agency
Regulations Development Support Division
2565 Plymouth Road
Ann Arbor, MI 48105.

4. COMMENT: Two commenters urged the Department to continue the use of the oxygenated fuels program as a control strategy to reduce carbon monoxide emissions from motor vehicles. One commenter however, expressed a preference for the use of ethanol blends, an alcohol-based gasoline product, rather than the use of methyl tertiary butyl ether (MTBE) blends, an ether-based gasoline product which has been reported to cause adverse health reactions, (8) (15)

RESPONSE: As the Department at this time is not acting upon its proposed suspension of the oxygenated fuels program, this program will continue in effect as a measure to control emissions of CO from motor vehicle exhaust.

The Department is aware that certain individuals report that they experience adverse health reactions when exposed to gasoline blended with ethers. However, the scientific studies conducted to date provide no basis for disallowing the use of MTBE blends. (See also the response to Comments 1 and 2 above.)

5. COMMENT: The New Jersey Coalition Against Aircraft Noise (NJCAAN) recommends that the Department adopt a "bubble" approach, similar to the one proposed in California, to identify and control Co emissions from aircraft. NJCAAN also recommends that the Depart-

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ment support the use of ocean air traffic routes to reduce the on-land impact of enroute aircraft noise and air pollution. (2)

RESPONSE: Individual states' authority to adopt or attempt to enforce standards for control of aircraft emissions is limited by Section 231 of the CAA which requires that any such regulatory standards be "identical" to standards set by the EPA. The Secretary of the United States Department of Transportation (DOT) is empowered by 49 U.S.C.A. App. §1421 to establish aviation fuel standards to control the emission of those air pollutants determined by the EPA to endanger health. At 40 C.F.R. Part 87, the EPA has established certain standards for the exhaust emissions of smoke from new aircraft gas turbine engines and in-use aircraft gas turbine engines. Currently, the EPA rules do not set standards for control of CO emissions from aircraft engines. However, Section 231 of the CAA authorizes the EPA to study and propose emission standards for the control of any air pollutant "from any class or classes of aircraft engines," including CO emissions, which the EPA Administrator determines endangers the public health or welfare. NJCAAN should consider, therefore, forwarding its recommendations to the USDOT Secretary.

In response to NJCAAN's recommendation that the Department support use of ocean air traffic routes, the Department does not have the authority to promulgate or alter rules regarding air traffic routes; it is the Federal Aviation Administration (FAA) that exercises authority concerning such matters. The Department, however, recommends that the NJCAAN discuss its concerns with the New Jersey Noise Control Council, which serves as an advisory group to the Department, on the use of ocean air traffic routes. The NJCAAN may contact Joyce C. Gulden at (908) 291-4436 or Joseph M. Lepis, Jr. at (201) 485-7001 of the New Jersey Noise Control Council or may write to:

Joyce C. Gulden
31 Bowne Road
Locust, New Jersey 07760.

6. COMMENT: The Department should explore the use of fuel additives other than the oxygenates used in the oxygenated fuels program that could also reduce carbon monoxide emissions from motor vehicles. This commenter states that the addition to gasoline of the liquid catalyst which it manufacturers can reduce carbon monoxide emissions by 100 percent and can also increase motor vehicle fuel economy. (17)

RESPONSE: The Department may authorize use in its oxygenated fuels program of only those additives allowed by the EPA pursuant to Section 211(f) of the CAA. The Department suggests that manufacturers of such alternative fuel additives submit their technologies to the EPA for approval.

7. COMMENT: The commenter recommends that the Department amend its rules to allow for the early introduction of the Reformulated gasoline (RFG) program, currently scheduled for implementation in New Jersey on January 1, 1995. The commenter suggested that it would be cost effective to introduce reformulated gasoline as early as October 1, 1994 in the Northern oxygen program control area and November 1, 1994 in the Southern oxygen program control area, instead of January 1, 1995, so that petroleum manufacturers would not have to produce the higher oxygen content gasoline for the few months prior to January 1, 1995, the start date for the RFG program. (6)

RESPONSE: The RFG Program is a Federal program, the starting date for which the Department does not have the legal authority to alter through its rules. However, the Federal RFG program will not supplant the more stringent oxygen content standard requirements set forth in the State's oxygenated fuels program rules at Subchapter 25. During the applicable oxygen program control period, gasoline sold in New Jersey will need to meet not only the Federal RFG requirements (which specify a minimum of 2.0 percent by weight oxygen content requirement for gasoline year-round), but also the higher 2.7 to 3.5 percent by weight oxygen content standard of the State's oxygenated fuels program. In fact, the EPA RFG rule, contained generally at 40 CFR Part 80, Subpart D, refers to reformulated gasoline which is intended for use in an oxygenated fuels program control area during an oxygenated fuels program control period as "oxygenated fuels program reformulated gasoline" or "OPRG". 40 CFR §80.2(nn). For more information concerning the federal RFG program, the reader is directed to the EPA's final RFG rule, Regulation of Fuels and Fuel Additives; Standards for Reformulated and Conventional Gasoline; Final Rule, at 59 FR 7716 (Wednesday, February 16, 1994). This final rule does not appear in the currently available, 1993 edition of the Code of Federal Regulations (CFR), but will be codified at 40 CFR Part 80.

8. COMMENT: The commenter expressed a concern that the Federal RFG program, discussed by the Department in connection with the proposed amendments to subchapter 25, establishes a minimum oxygen content requirement but does not establish a maximum oxygen content requirement for reformulated gasoline. (5)

RESPONSE: The EPA's final rule for the RFG program establishes an oxygen content maximum standard for reformulated gasoline at 40 CFR §80.41(g). This maximum shall be either 2.7 or 3.5 percent by weight, depending on a number of variables described with greater particularity at 40 CFR §80.41(g).

9. COMMENT: The commenter is concerned that a non-representative event might be the basis for the Department's determination that there has been an exceedance of the NAAQS for Co and, in turn, might be the basis for the Department's determination to reinstate the oxygenated fuels program. The commenter asks what the Department would use as an air monitoring basis to determine whether a CO exceedance had occurred in a control area during an applicable oxygen program control period. (6)

RESPONSE: The Department would base any determination of whether an exceedance of the NAAQS for CO has occurred on data obtained through its air monitoring network. The Department's air monitoring network includes 16 monitors located throughout the State which continually sample the ambient air in New Jersey. The placement of these monitors was designed to ensure that the Department would obtain representative air quality data.

In analyzing this data, the Department would examine any measurements that indicate an exceedance may have occurred to ensure that such measurements are not the result of a non-representative event. In making such a determination, the Department would follow the procedures established in the EPA's guidance document entitled Guidelines on the Identification and Use of Air Quality Data Affected by Exceptional Events. For the purposes of analyzing air quality data, the EPA defines "an exceptional event" as an event that is not expected to recur routinely at a given location, or that is possibly uncontrollable or unrealistic to control through the State Implementation Plan (SIP) process. For example, exceedances of a NAAQS due to forest fires, structural fires, or unusual traffic congestion could be considered exceptional events. The Department would also verify the data using standard air monitoring procedures and would take into account such factors as weather conditions, wind patterns, and traffic patterns. If, using these criteria, the Department determines the measurements are caused by an exceptional event and are not, therefore, reflective of prevailing ambient conditions, the Department would submit these findings to the EPA and ask the EPA to approve disregarding those measurements.

N.J.A.C. 7:27-25.3 General Provisions

Several commenters expressed concerns on the portion of the proposed amendments at N.J.A.C. 7:27-25.3(c) and (d) which would suspend the oxygenated fuels program in New Jersey effective January 1, 1995. The comments are as follows:

10. COMMENT: The New York State Department of Environmental Conservation (NYSDEC) expressed concern that the proposed suspension would adversely impact the attainment of the NAAQS for CO in the New York City portion of the New York-New Jersey-Connecticut consolidated metropolitan statistical area (CMSA).

Since motor vehicles travel freely across the borders of these three states, New York State believes it is important that the New York-New Jersey-Connecticut CMSA continue with the oxygenated fuels program. Otherwise, the daily influx of dirtier burning motor vehicles from New Jersey into New York City would frustrate New York State's effort to come into attainment of the NAAQS for CO.

Secondly, NYSDEC questioned the Department's efforts to suspend the program in light of the two reported exceedances of the NAAQS for CO this past oxygenated fuels season, 1992-1993.

The NYSDEC also believes that should the Department adopt the suspension of the oxygenated fuels program Statewide, at the minimum, oxygenated fuels should be used as a maintenance strategy. (1)

11. COMMENT: Three commenters, including the EPA, questioned whether, under the terms of the Federal Clean Air Act, a state which is part of a multi-state area, such as New Jersey (which is part of the Philadelphia CMSA as well as the New York City CMSA) could suspend the oxygenated fuels program in its portion of the CMSA before the other states comprising the CMSA also demonstrate attainment of the NAAQS for CO, request termination of their oxygenated fuels programs

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and demonstrate that such a termination of the program would not result in future violations of the NAAQS for CO. (1) (14) (18)

12. COMMENT: New York Mercantile Exchange (NYMEX) also raised a number of concerns. For one, the New York Harbor is the petroleum products market used by oil refiners and trading companies to import, store, and blend gasoline ultimately destined for areas within New Jersey, Connecticut and New York. The New York Harbor could not continue as a single market unless all three states had identical oxygenation requirements. Suspension of the oxygenated fuels program in any one state, without a concurrent suspension of the program in others, would destroy the fungibility of the product. Such fungibility contributes to the economic efficiency of the market and reduces the costs of supplying gasoline to consumers. In addition, dividing this single marketplace would disrupt trading in the NYMEX New York Harbor Unleaded Gasoline Futures market, again imposing higher costs on gasoline consumers in New Jersey and throughout the metropolitan New York area.

Also NYMEX recommends that any regulatory changes pertaining to the oxygenated fuels program be promulgated in a timely manner so that market participants may plan their futures contracts accordingly. Significant advanced notice of states' oxygenated gasoline requirements is essential to avoid major disruptions in the marketplace. Uncertainty regarding contract specifications, particularly those resulting from changes in government regulations imposes costs on companies ultimately passed on to the end consumer. Therefore, the Department is encouraged to provide NYMEX with sufficient lead time and certainty regarding New Jersey's oxygenated fuels program for the 1994-1995 season. Preferably, this proposal would not affect the upcoming 1994-1995 oxygenated gasoline season, but rather a subsequent season.

NYMEX indicated an intention to list futures contracts for trading for January and February of 1995 in April of 1994, reflecting a minimum 2.7 percent oxygen content specification for gasoline, consistent with the existing oxygenated gasoline requirements for the New York City CMSA. Uncertainty regarding New Jersey's oxygenated fuels program could cause considerable disruption to the futures markets. Therefore, NYMEX strongly encourages the Department to delay any decision to suspend the oxygenated fuels program until the 1995-1996 oxygenated fuels program season. (14)

RESPONSE TO COMMENTS 10, 11 AND 12: The Department is not herein acting on the proposed suspension of the oxygenated fuel program. As these comments made by NYSDEC, NYMEX, and the EPA pertain to the proposed suspension, the Department is not responding to them at this time. Should the Department in the future proceed with adoption of those proposed amendments, it will address these comments at that time.

N.J.A.C. 7:27-25.8 Labeling

13. COMMENT: The commenter expressed concern that the proposed labeling amendments at N.J.A.C. 7:27-25.8 would eliminate the existing requirement that the petroleum industry label the gasoline pumps at retail stations during the oxygenated fuels program season. (5)

RESPONSE: The Department's labeling rules at N.J.A.C. 7:27-25.8 require that gasoline pumps at retail stations be labeled to identify the gasoline as oxygenated during an applicable oxygen program control period. The amendments to the labeling requirements adopted herein relieve only wholesale purchaser-consumers of this gasoline pump labeling requirement; the requirement remains in place for retailers.

These gasoline pump labeling requirements do not, however, require that the oxygenate type be identified. Instead information concerning the category of oxygenate (ether or alcohol) being used in the gasoline is required at N.J.A.C. 7:27-25.4(b) to be set forth on the bills of lading or other documentation maintained by the retailer or wholesale purchaser consumer.

Summary of Hearing Officer's Recommendations and Agency Responses:

Richard V. Sinding, former Assistant Commissioner for the Department's Office of Policy and Planning, served as the hearing officer at the March 25, 1994, public hearing held at the Department of Environmental Protection Building in Trenton, New Jersey. After reviewing the oral testimony presented at the public hearing, the Hearing Officer has recommended that the Department proceed to adopt the proposed amendments to subchapter 25 with the following exception as explained below:

The Department should proceed to adopt the proposed suspension of the oxygenated fuels program at N.J.A.C. 7:27-25.3, if and when the United States Environmental Protection Agency (EPA) approves New Jersey's Carbon Monoxide State Implementation Plan—Redesignation and Maintenance Plans for the areas in New Jersey that are currently designated by EPA as not meeting the national ambient air quality standard for carbon monoxide (carbon monoxide nonattainment areas). Further, should the EPA approve New Jersey's Carbon Monoxide State Implementation Plan—Redesignation and Maintenance Plans for both Camden County and the Nine Not Classified Areas without also approving a Carbon Monoxide State Implementation Plan—Redesignation and Maintenance Plan for the carbon monoxide nonattainment areas within the Northern oxygen program control area, the Department should adopt the proposed amendments to N.J.A.C. 7:27-25.3, modified to suspend the oxygenated gasoline requirements for the Southern oxygen program control area only.

The Department has determined to delay adoption of N.J.A.C. 7:27-25.3(c) and 25.3(d) for the reasons explained in more detail in the Summary of Public Comments and Agency Responses, above. The Hearing Officer's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of public hearing is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

ATTN: Docket #05-94-01
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Agency-Initiated Changes:

Additional changes have been made on adoption as follows:

At N.J.A.C. 7:27-25.1, the definition of "Reid vapor pressure" was erroneously adopted out of alphabetical order. The definition of "Reid vapor pressure" has been reordered to follow "refining process" and to precede "research."

At N.J.A.C. 7:27-25.8(c), the citation, "N.J.A.C. 7:27-25.10," has been corrected to read "N.J.A.C. 7:27-25.9" to accurately reflect the recodification of subchapter 25 adopted January 13, 1994. See adoption notice published February 22, 1994 at 26 N.J.R. 1148(a).

At N.J.A.C. 7:27-25.9(c)1, the word "an" has been inserted immediately following the word "or" and preceding the phrase "Act of God" for stylistic consistency. In a like manner, at N.J.A.C. 7:27-25.9(f)2i, the word "a" has been inserted immediately following the phrase "for example," and preceding the phrase "natural disaster" and the word "an" inserted immediately following the word "or" and preceding the phrase "Act of God."

At N.J.A.C. 7:27-25.9(k)4, the citation "N.J.A.C. 7:27-25.12(d)", has been corrected to read "N.J.A.C. 7:27-25.11(d)" to accurately reflect the recodification of subchapter 25 (see 26 N.J.R. 1148(a)).

At N.J.A.C. 7:27-25.9(m)3, the citation "N.J.A.C. 7:27-25.12(d)" has been corrected to read "N.J.A.C. 7:27-25.11(d)" to accurately reflect the recodification of subchapter 25 (see 26 N.J.R. 1148(a)).

N.J.A.C. 7:27-25.11(a) was adopted containing the erroneous citation "N.J.A.C. 7:27-25.5," which has been corrected to read "N.J.A.C. 7:27-25.7."

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

7:27-25.1 Definitions

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

...

"National ambient air quality standard" or "NAAQS" means an ambient air quality standard promulgated at 40 CFR 50.

...

["Reid vapor pressure" (RVP) means the absolute vapor pressure of a petroleum product in pounds per square inch (or kilopascals) at 100 degrees Fahrenheit (37.8 degrees Celsius).]

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery.

...

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"Refining process" means the combination of physical and chemical operations including, but not limited to, distillation, cracking, and reformulations, performed on crude oil in order to produce petroleum products, including gasoline.

"Reid vapor pressure" (RVP) means the absolute vapor pressure of a petroleum product in pounds per square inch (or kilopascals) at 100 degrees Fahrenheit (37.8 degrees Celsius).

"Research" means investigation directed toward the discovery of facts, scientific principles, reactions, or substances.

. . .

7:27-25.8 Labeling

(a) During any oxygen content control period in which the gasoline provided, offered for sale, sold or otherwise exchanged in trade at a facility owned or operated by any retailer is subject to the oxygen content standards set forth at N.J.A.C. 7:27-25.3, the retailer or wholesale purchaser-consumer shall label as specified in (b) through (d) below each fuel pump or other gasoline dispensing device.

(b) (No change.)

(c) If the fuel pump or other gasoline dispensing device is dispensing nonconforming fuel in accordance with a variance issued by the Department pursuant to N.J.A.C. 7:27-*[25.10]****25.9***, the label shall state the following: The fuel dispensed from this pump does not meet standards established to reduce carbon monoxide pollution from motor vehicles but is temporarily authorized to be distributed due to a shortage of supply of fuel that meets the standard.

(d) (No change.)

7:27-25.9 Variance for shortage of supply

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

(c) A refiner, importer, blender, or distributor seeking a variance pursuant to this section shall submit a written application to the Department, containing the following information:

1. Documentation that there is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, a natural disaster or ***an*** "Act of God";

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

(f) The Department shall deny any application for a variance if:

1. (No change.)

2. The applicant fails to demonstrate to the satisfaction of the Department, that:

i. There is or may be an inadequate supply of conforming gasoline due to extreme and unusual circumstances, for example, ***a*** natural disaster or ***an*** "Act of God";

ii.-iv. (No change.)

(g)-(j) (No change.)

(k) Any person holding a variance issued by the Department pursuant to this section shall:

1.-3. (No change.)

4. Pay any outstanding service fees, charged in accordance with N.J.A.C. 10:27-*[25.12(d)]****25.11(d)***, within 60 days after receipt of a fee invoice.

(l) (No change.)

(m) The Department may revoke any approval of any variance granted pursuant to this section if the Department determines that the person to whom the Department has issued the variance has failed to:

1.-2. (No change.)

3. Pay any outstanding service fees, charged in accordance with N.J.A.C. 7:27-*[25.12(d)]****25.11(d)***, within 60 days after receipt of a free invoice; or

4. (No change.)

(n) (No change.)

7:27-25.11 Service fees

(a) Any person who applies for an exemption pursuant to N.J.A.C. 7:27-*[25.5]****25.7*** shall submit with the application, as an integral part thereof, a non-refundable service fee of $500.00.

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

HEALTH

(a)

HOSPITAL FINANCING

Hospital Reporting of Uniform Bill—Patient Summaries (Inpatient)

Adopted Amendments: N.J.A.C. 8:31B-2.1, 2.3, 2.4 and 2.5

Proposed: January 3, 1994 at 26 N.J.R. 10(a).

Adopted: August 25, 1994 by Len Fishman, Commissioner, Department of Health, (with approval of the Health Care Administration Board).

Filed: August 26, 1994 as R.1994 d.488, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq.

Effective Date: September 19, 1994.

Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:

Commenters: Blue Cross and Blue Shield of New Jersey and O'Conco Health Care Consultants.

COMMENT: The importance of timely and accurate uniform billing data was recognized; however, concerns were raised about the cost of the data reporter role compared with its functionality. They listed examples of data reporting and timeliness that need improvement, even though there has been a data reporter for several years. Blue Cross offered to perform the data reporter function at no additional cost to the hospitals, which would save 19 cents per inpatient discharge for data reporting that Health Research and Educational Trust (HRET) currently receives, resulting in a total annual cost savings of $250,000 for the hospitals.

RESPONSE: The current rules includes language designed to improve timeliness of uniform billing data submissions. Specifically, N.J.A.C. 8:31B-2.4(b)1 states that "A UB-92 must be completed, finalized and submitted to the Data Intermediary for each patient within 30 days of discharge of the patient."

Hospitals are able to evaluate the services of the data reporter and can designate another organization, such as Blue Cross and Blue Shield, to perform this function if they so choose. The rules do not restrict this decision.

Regarding improvement of data quality, the Department considers suggestions from data users and works with the hospitals through the State Uniform Billing Committee, chaired by the New Jersey Hospital Association, to improve quality wherever possible.

Commenter: Health Research and Educational Trust (HRET)

COMMENT: HRET questions whether it is the intention of the Department to restrict the ability of hospitals to select their data intermediary and also requests the selection and performance criteria for the data intermediary. They also comment that the obligations of parties to share data are not directly addressed in the rules. HRET also requests that changes in the text be made to reflect data reporter analysis of information after it is provided to the Department and the exclusion of the data intermediary from data reporter contracts with hospitals. HRET further requests clarification of the Department's procedure regarding the re-release of data.

RESPONSE: It is not the intention of the Department to constrain the hospital's choice of a data intermediary. N.J.A.C. 8:31B-2.5(a)2 states "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." An organization seeking designation as a data intermediary would need to demonstrate their ability to perform the functions described in N.J.A.C. 8:31B-2.5(a)1 and timeliness requirements set forth in N.J.A.C. 8:31B-2.5(g)1i.

The responsibilities of parties regarding exchange of data are documented in N.J.A.C. 8:31B-2.5(f)3. This paragraph was added to specifically define the role of data reporter and is more specific than the deleted text. In response to the request of HRET, the Department has deleted the data intermediary as a party to the signed agreement.

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The Department restricts the re-release of data without express authorization. Such re-release is permitted provided that patient and physician confidentiality is maintained.

Summary of Agency-Initiated Changes:

The Department has determined that a signed agreement between the hospital and the data reporter would assure that procedures are followed to protect confidential data. The Data Intermediary would not be required to be a part of the formal agreement, since the Department has a separate contract with the Data Intermediary which assures the protection of confidential data.

The Department has also corrected inappropriate dates at N.J.A.C. 8:31B-2.5(e)1i for required submission of a memorandum of understanding between the Department of Health and the Data Intermediaries regarding data edits, and, at (f)3 for the annual updates. It is necessary to change these dates, since the dates originally proposed have passed.

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 herein by reference the National Uniform Bill (UB-92 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) (No change.)

8:31B-2.3 Billing form

(a) The UB-92 is a multi-part form set printed in red ink. Detailed specifications are included with the UB-92 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. Guidelines for completing the billing form, UB-92 HCFA-1450, have been developed by the NUBC for Medicare, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), and Commercial Insurers.

2.-3. (No change.)

(b) Billing timelines requirements are as follows:

1. A UB-92 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-92 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 full patient billing and abstract information be completed and submitted to the appropriate Data Intermediary in compliance with the Data Intermediary time limits and these rules, specifically 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 the data processor approved by the Department of Health responsible for collecting, editing generating selected reports and submitting the UB-92 data to the Department of Health.

2. (No change.)

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

(e) Data should 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]* ***September 30, 1994***.

(f) Reports shall be produced as follows:

1.-2. (No change.)

3. In addition, hospitals may designate an additional organization, known as a data reporter, to assist in the verification of the accuracy and reliability of the data submitted to the intermediary. The Department of Health shall direct the data intermediary, selected under (a) above, to release a hospital's data to the reporter only upon receipt*[, from the data intermediary,]* of a current signed agreement between the hospital*[, the data intermediary]* and the data reporter. This agreement shall be updated annually, beginning *[March 31, 1994]* ***September 30, 1994***, and shall:

i. Indicate the hospital's designation of a data reporter;

ii. Provide for the protection of confidential data consistent with Department of Health procedures; and

iii. Allow for subsequent re-release of the data by the reporter only when the procedures, set by the Department of Health, have been followed.

4. (No change.)

5. The ultimate responsibility for the completeness and accuracy of the UB-92 data submitted to the Department of Health rests with the hospital.

6. Upon request of a payer, the final UB-92 information shall be provided to the payer, for its own cases, by the UB-92 Intermediary(ies).

(g) Data shall be submitted to the Department of Health as follows:

1. Those data elements required to be submitted to the Department of Health by each hospital through their data intermediary are described in detail in the addendum to the UB-92 guidelines.

i.-ii. (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-92 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.)

(i) The intermediary(ies) shall charge the hospitals a maximum amount of $1.45 per discharge to process hospital UB-92 data.

(a)

ESSENTIAL HEALTH SERVICES COMMISSION

Health Access New Jersey (The Access Program)

Adopted New Rules: N.J.A.C. 8:91

Proposed: May 16, 1994 at 26 N.J.R. 2007(a).

Adopted: August 30, 1994 by the Essential Health Services Commission, Ann Weiss, Executive Director.

Filed: August 31, 1994 as R.1994 d.495, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-18.55d, 18.56g and 18.65.

Effective Date: September 19, 1994.

Expiration Date: September 19, 1999.

Summary of Public Comments and Responses:

Comments were received from 30 commenters. Not all comments received were relevant to the proposed rules, and thus, may not appear below. Additionally, certain comments regarding specific provisions of the benefits plans promulgated by the Individual Health Coverage

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("IHC") Program Board of Directors ("Board") cannot be responded to fully by the Essential Health Services Commission ("EHSC") in the manner suggested by the commenters. These comments appear below with further explanation. Comments were received from (the):

New Jersey Council on Alcoholism and Drug Abuse, Inc.
Alcoholism & Drug Abuse Council of Ocean County
Camden County Council on Alcoholism and Drug Abuse, Inc.
Cape May County Council on Alcoholism and Drug Abuse, Inc.
Mercer Council on Alcoholism and Drug Addiction
Hudson County Council on Alcoholism and Drug Abuse
National Council on Alcoholism and Drug Dependence—Hunterdon County
National Council on Alcoholism and Drug Dependence of Middlesex County, Inc.
National Council on Alcoholism and Drug Dependence North Jersey Area, Inc.
National Council on Alcoholism and Drug Dependence of Union County, Inc.
Passaic County Council on Alcoholism and Drug Abuse Prevention, Inc.
Somerset Council on Alcoholism and Drug Dependency, Inc.
Sussex Council on Alcoholism and Drug Abuse
Warren County Council on Alcoholism and Drug Abuse
Association of Alcoholism and Drug Addiction Halfway Houses of New Jersey
New Jersey Task Force on Women & Alcohol, Inc.
Council on Compulsive Gambling of New Jersey, Inc.
New Jersey Family Planning League, Inc.
Family Planning Association of New Jersey
University of Medicine & Dentistry of New Jersey (St. Peter's Medical Center)
New Jersey Optometric Association
New Jersey State Nurses Association
Medical Society of New Jersey
New Jersey Business & Industry Association
Time Insurance Company
HIP/Rutgers Health Plan
Blue Cross Blue Shield of New Jersey
US Healthcare
New Jersey Individual Health Coverage Program—Technical Advisory Committee
New Jersey State Department of Health

COMMENT: Three commenters stated that restricting subsidies to the purchase of IHC plans D, E, and HMO with the lowest deductible and copayment options was too limiting. One commenter stated that Plan D with a $250.00 deductible (for a single individual) is "richer" than many employer-sponsored plans, and that, while the commenter understood that one of the goals of the Access Program is to decrease the amount of uncompensated care provided by hospitals and physicians, subsidy dollars might be made available to more individuals by limiting the services covered to essential services and permitting the purchase of higher deductibles, with subsidy directed toward those who actually use services but are unable to afford the full deductible. One commenter stated that a person who has already purchased a high deductible health benefits plan may find that their cost of purchasing coverage under the Access Program is actually greater (if their subsidy is relatively low) because the plans are richer. This commenter also stated that such an individual would only be able to enroll in the Access Program during its open enrollment period (for people currently covered under individual plans) because the subsidized plans would, in fact, be richer. Two commenters stated that the Commission is making an assumption that there will be problems if all of the (IHC) benefit packages are available, but that a better approach may be to first allow all IHC health benefits plans to be eligible for subsidy, until a determination that a problem does exist due to this strategy. Both commenters stated that, in certain situations, a $1,000 deductible plan may be the most appropriate plan for a potential enrollee, and that the choice should be that of the enrollee.

RESPONSE: The EHSC decided to subsidize Plan D with a $250.00 deductible, Plan E with a $150.00 deductible, and the HMO Plan with a $10.00 copayment, rather than subsidize the purchase of such plans at higher deductibles and copayments for similar reasons. Above all, the EHSC's goal is to assure not only that Access Program enrollees have access to insurance, but that they also have access to comprehensive, quality, community-based health care. It is the belief of the EHSC that merely getting people covered is insufficient for purposes of controlling health care delivery costs, or improving the health status of the population. The EHSC believes that individuals need to be persuaded not only that they should utilize health care services more appropriately, but that they can afford to do so.

The EHSC is postulating that people who obtain coverage through the Access Program more often will seek treatments of nonemergency conditions through physician office visits, health clinics, outpatient facilities or ambulatory facilities, rather than going through triage in hospital emergency rooms, if their out-of-pocket expenses are relatively low and perceived as manageable for receipt of such services. Moreover, the EHSC believes that, if people know that their costs at the point of service are relatively limited, they will be better able to obtain or continue treatments for illnesses while the treatments are still relatively inexpensive, rather than waiting until the condition worsens or reaches a point at which in-patient hospital care and/or more costly treatments become unavoidable. The EHSC does not believe that a $1,000 deductible effectively provides affordable access to nonhospital health care settings for most people who otherwise need subsidies in order to be insured.

It must be kept in mind that the deductibles for Plans D and E are doubled when the insurance contract covers more than one person, so that a $150.00 deductible becomes $300.00, a $250.00 deductible becomes $500.00, and a $1,000 deductible becomes $2,000 for a family. The EHSC and other parties interested in health care cost control and reformation of the health care delivery systems recognize that changes in consumer attitudes and behaviors in obtaining health care services is an important element in the reformation of the health care delivery system and the inherent costs in that system. The road blocks to receipt of appropriate health care services may be as much psychological as pure economics. For some people, the idea of facing a $1,000 (or $2,000 deductible) may be psychologically staggering, even if it may be something that they can afford with budgeting. On the other hand, there are many people for whom the $1,000 deductible ($2,000 for a family) represents a true economic road block, forcing them to choose between buying food, paying utility bills or meeting all rent or mortgage payments.

In other words, the EHSC did not want to provide subsidies for the purchase of insurance that left many people with the feeling that they still could not afford to go to the doctor once they had exceeded their $300.00 per person preventive/primary care benefit. The EHSC thought this would be counterproductive, particularly in the case of infants, young children, expectant mothers, and persons with chronic conditions that should be monitored.

Additionally, the EHSC notes that enrollment in the Access Program is voluntary. People who want to purchase Plan D or Plan E with a higher deductible may do so, but without a subsidy. People at the higher end of the income eligibility scale, where subsidies may be relatively low, indeed may choose not to take advantage of the Access Program because their contributions for the purchase of Plan D with a $250.00 deductible may be greater than if they pay the full premium for the purchase of Plan C with a $500 deductible. (This is particular true given that certain insurance companies have structured their pricing to greatly favor the purchase of plans with larger deductibles.) People have that choice, and the EHSC designed the Access Program with the belief that people should have a real choice.

Naturally, reduction of uncompensated care costs is a goal of the EHSC in the design of the Access Program. Clearly, the uncompensated care costs for hospitals will be reduced if people increase their use of appropriate health care services, and if their deductibles and coinsurance levels are relatively small should they ultimately use the hospital's services and fail to pay. The EHSC believes that developing and enforcing payment arrangements for people who owe smaller sums of money ultimately is more successful, then when people owe thousands of dollars, and view the bills as insurmountable, and/or unending.

Also, the EHSC has designed the Access Program with the intent of making it as administratively simple as reasonably possible, while being responsive to people's needs. The suggestion about directing some subsidy dollars towards the purchase of higher deductible plans, and some subsidy dollars to the payment of uncollected deductibles and coinsurance (or otherwise instituting a voucher system for deductibles and coinsurance) is a more administratively complex system than the EHSC wanted to endorse at this time. So is the idea of letting people purchase any and all IHC standard health benefits plan options. The more complex a system, the more administratively costly, and the more difficult to monitor quality controls.

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The EHSC wants and hopes that the Access Program will lend itself well to easy study and analysis, given its straightforward format and minimal variables. Once the progress of the Access Program can be verified, with its weaknesses and strengths clearly identified, then it may be more appropriate to consider the addition of more variables and a more complex administrative structure.

The EHSC acknowledges that the plans it intends to subsidize are "richer" than many employer-sponsored plans, because the deductibles (and copayments) are lower. However, the EHSC does not believe this is inappropriate, given the income eligibility scale, and that eligibility is also contingent upon an individual not being eligible for employer-sponsored coverage.

The statement that many individuals currently covered under an individual policy could not enroll in the Access Program until its annual open enrollment period because the subsidized plans would be richer than their current coverage is inaccurate. It does not matter whether someone's current coverage is richer or less rich than the plans to be subsidized by the Access Program; all people currently covered under an individual policy must wait until the annual open enrollment period to enroll in the Access Program. (An exception exists for limited benefit policies.)

COMMENT: Twenty commenters stated that one or more provisions in Plans D, E or HMO are questionable, and should be changed.

Sixteen commenters stated that licensure by the New Jersey State Department of Health should be sufficient to assure that a facility for treatment of substance abuse (or alcohol abuse) will be recognized as an eligible facility for purposes of reimbursement under the health benefits plans. Several of the commenters argued that this change would assure a continuum of care in the least costly and most appropriate setting for most patients.

Fifteen commenters stated that exclusion of methadone maintenance treatments is inappropriate. Most commenters argued that methadone treatments are often the only alternative for heroin addicts, including pregnant women. These commenters argued that it is preferable to remove as many heroin addicts from the ranks of the intravenous drug user as quickly as possible, not only for their own health, but for the health of others, particularly given the prevalence of HIV infection and AIDS among the IV-drug-using population, their sexual partners and their respective offspring.

Eighteen commenters stated that exclusion of smoking cessation aids and stop-smoking providers is inappropriate. Most commenters noted the health hazards of smoking and the relative low cost of smoking cessation treatments compared to the treatment of health problems which develop due to smoking, both for smokers, many children of smokers, and others exposed to secondhand smoke. Additionally, several commenters stated that it is now inappropriate to refer to discontinuance of tobacco products as "smoking cessation," inasmuch as tobacco may be chewed as well, and given that the process of discontinuing tobacco use is really a treatment for chemical dependence upon nicotine. Two commenters stated that the policy forms should be changed to reflect this fact, even if treatments for nicotine dependence continued to be excluded under the policies.

Thirteen commenters stated that an annual limit of 20 outpatient visits (under the HMO Plan), even with a possible exchange of inpatient days for outpatient days (20 stated outpatient days plus 60 possible exchanged days) might be insufficient for someone being treated for alcoholism or substance abuse. Several commenters noted that many patients require repeat treatments, or stop treatments for a period of time, and then re-enter a treatment program.

In the same vein, 15 commenters stated that referrals to treatment programs should not be through primary care physicians only, but rather, that referrals, number of appropriate visits and type of treatment should be based upon the clinical needs of the individual, as determined by personnel (physicians or others) familiar with the American Society of Addiction Medicine ("ASAM")-type criteria.

One commenter stated that the number of inpatient days may be inadequate to meet the multiple and complex needs of people who are dually diagnosed. The commenter further stated that medication stability may have to take place primarily at the inpatient level of care.

One commenter stated that coverage is short-sighted in its scope because there is no specific reference to compulsive gambling as a covered reimbursable, treatable mental health expense.

RESPONSE: The EHSC takes no position on the merits of any of the commenters' arguments, but notes that it is not within the authority of the EHSC to alter the benefits of the individual standard health benefits plans. Such authority rests with the IHC Board. The EHSC anticipates that a further explanation of its reasoning for electing to use the IHC Board's plans (thereby limiting the EHSC's authority with respect to benefit plan design) is warranted.

The legislation authorizing the Access Program was only one of three pieces of health reform legislation enacted simultaneously. The other two pieces of legislation created insurance reform programs with boards of directors specifically given the task of designing benefits packages. The EHSC and the two boards charged with developing standardized plans for the small employer and individual health insurance markets recognized that all three pieces of the reform measures contained in the legislation need to work together, if New Jersey is to significantly reduce its uninsured population. The boards and EHSC have acted to try to bring positive influences to bear upon each other's respective markets, rather than working as though the markets existed in a vacuum.

The EHSC, which had no specific desire to develop or become involved in the direct operation of another insurance mechanism (such as a State-run risk pool) or an entitlement program (similar to Medicaid), decided to try to coordinate its Access Program with the insuracne reform laws. The EHSC has attempted to put together an administrative mechanism for the distribution of subsidy dollars to help people to purchase or maintain coverage in the private insurance market. In so doing, the EHSC has relied upon the combined resources and expertise of the members of the two boards to implement sound benefits packages for that market.

Additionally, many members of the EHSC expressed an interest in using the IHC Program as another means to encourage carriers doing business in New Jersey to enroll individuals and families who have traditionally been uninsured. The EHSC has chosen a method of funneling subsidy dollars which it believes will influence more carriers to enter the individual market, increasing choices for all consumers in New Jersey and promoting healthy competition among carriers.

Carriers have already begun to re-enter the individual market, due to reforms which incorporate both positive and negative incentives for carrier participation in that market. The EHSC believes that, as it enhances the purchasing base of lower income people, even more carriers will decide to meet the increased demands for health coverage, thereby avoiding monetary "penalties" they might otherwise incur for non-participation in the individual market. Carriers seeking increased marketshare should have an incentive to maintain very competitive rates, benefiting both the subsidized and nonsubsidized individual markets.

The EHSC also believes that use of the individual standardized health benefits plans will provide the most continuous protection to enrollees as their work or economic status changes (providing at least a middle ground between the benefits program under Medicaid and many employment-based benefits programs), while assuring that enrollees are essentially indistinguishable from other privately insured persons.

Clearly, in choosing this methodology, the EHSC has knowingly elected to limit its authority in certain areas. Other methods may be available, and may even be explored in the future. However, the EHSC believes that its decision to elect this means for funneling the subsidy dollars (embracing the IHC Program) is based upon sound philosophical reasoning (combined with statutory requirements for contracting with carriers).

The EHSC's embrance of the IHC Program does not necessarily mean that it agrees with all aspects of the benefit packages designed by the IHC Board. However, a review of the IHC Board's activities, combined with those of the Small Employer Health Benefits ("SEH") Program Board of Directors ("Board"), in designing the benefits packages provides the EHSC with a level of confidence that the three plans which the EHSC has elected to subsidize are comprehensive, progressive and generally designed with the best interests of the consumer in mind in terms of trade-offs between covered services, costs and inherent problems of anti-selection which impact upon premiums.

The IHC Board, in conjunction with the SEH Board, began designing the health benefits plans initially in March of 1993. The early process included a review of benefits packages then currently available in the individual and small employer markets in various delivery systems (pure indemnity through HMO managed care designs) as well as a public hearing. Twenty-seven different entities provided testimony at the public hearing held on May 19, 1993. Speakers included consumers, consumer groups, various health care provider organizations representing both practitioners and health care institutions, insurance agents and brokers, and carriers.

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The IHC Board proposed its health benefits plans in early June, subsequently held additional meetings with various interested parties (including members of the mental health and substance abuse treatment communities), and, following response to comments, adopted its plans in early August of 1993. The SEH Board, having fewer time constraints, commissioned an actuarial study of the benefit designs and held another public hearing in September 1993 prior to adoption of its health benefits plans. Throughout the entire process, there was ongoing debate about most, if not all, of the issues raised by the commenters. While there was seldom unanimity among all of the carriers and public representatives sitting on the two boards, the resulting standard health benefits plan designs represent the majority opinion (often based upon compromise).

Neither board, however, has ever claimed that each and every provision is written in stone, and both boards anticipate annual reviews of the forms. Indeed, both boards are in the process of reviewing and amending their respective policy forms and provisions of the health benefits plans. The IHC Board's review and amendment process—which, as always, has taken place during open public meetings—included the opportunity for receipt of testimony on July 21, 1994 at a public hearing.

The majority of the changes involve language clean-up, and general conformity with the SEH Board's forms (which varied slightly from the IHC Board's because of comments provided at the September 1993 public hearing). The IHC Board also made language changes to conform with recent, applicable statutory enactments (for instance, recognition of off-label drug prescriptions under certain conditions). Notably, the IHC Board has amended the definition of "substance abuse center" to include all centers licensed by the State of New Jersey. This was done in order to conform the definition with that already contained in the SEH standard forms.

Regarding issues of benefit design and covered services, it is best if commenters bring their questions and comments to the attention of the IHC Board (or SEH Board, as appropriate) for consideration.

COMMENT: One commenter questioned who it is who has "sole discretion" with respect to determining whether a patient is receiving repeated detoxification treatments for chronic substance abuse, in which instance coverage will be discontinued unless the patient is being cooperative with an on-going treatment plan developed by a participating provider. The commenter also questioned whether someone will assume the responsibility of the costs for the continued (uncovered treatments) or whether the patient will be required to forego services.

RESPONSE: These questions regard the HMO Plan policy. Sole discretion rests with the contracting HMO. Though no two HMOs are exactly alike, typically, the people evaluating the patient's chronicity, responsiveness and cooperation will include the HMO's medical staff (usually a medical director and a staff of registered nurses who evaluate treatment protocols), the individual's primary care provider, and the health care provider to whom the individual's care has been referred.

If an individual's benefits for treatment of the specific condition are terminated by the HMO, it will be up to the individual to cover the costs of any additional treatments for that condition. This may mean that the individual will be responsible for paying the costs out-of-pocket, or seeking other alternative routes if eligible (such as government-sponsored programs, including government-funded clinical trials), or the individual may have to forego further clinically-based treatments.

COMMENT: One commenter asked who it is who determines whether a court-ordered chemical dependency admission is medically necessary, and whether the cost of the evaluation is assumed by the patient or through a general fund for that purpose.

RESPONSE: These questions regard the HMO Plan policy. The HMO will determine whether a court-ordered chemical dependency admission is medically necessary, and the costs of such an evaluation will be assumed by the HMO as a regular cost of doing business.

COMMENT: Two commenters stated that the definition of "health care provider" is broad, and fear there may be different interpretations. The commenters request confirmation that ambulatory care facilities licensed by the New Jersey State Department of Health will be recognized as a "health care provider."

RESPONSE: The EHSC agrees that its definition of health care provider includes any ambulatory care facilities licensed by the New Jersey State Department of Health. However, the commenters and other readers are cautioned that the definition of health care provider as it appears at N.J.A.C. 8:91-1.2 does not appear in the IHC Program's health benefits plans. It was necessary for the EHSC to define the term "health care provider" to explain what the EHSC meant by the term, as opposed to separately defining the terms doctor, nurse, hospital, physical therapist, chiropractor, etc. It must be noted that, ultimately, the terms within the policy forms will control which facilities and practitioners receive reimbursement for services rendered.

COMMENT: One commenter stated that the EHSC should specify in rules the process by which its annual review of the appropriateness of the benefits packages (N.J.A.C. 8:91-2.3(c)) will be conducted. Specifically, the commenter questioned whether notice will be provided to all interested parties, and whether or not public hearings or testimony will be solicited as part of that process.

RESPONSE: The EHSC disagrees that specifically of the process in rules is necessary. To date, all work on the Access Program has been done on the subcommittee level, with recommendations, and rationale for those recommendations, being brought to the EHSC at open public meetings before formal action is taken. The subcommittee will continue to meet to review various aspects of the Access Program once it is up and running, moreso to determine whether use of the IHC Program's individual standard health benefits plans are meeting the intended goals of the Access Program, not necessarily to evaluate whether specific benefits should or should not be included in those plans as such. (It must be kept in mind that the EHSC does not have the authority to alter the terms or benefits of the IHC standard health benefits plans, but may make recommendations to the IHC Board about them from time to time.) The subcommittee will bring recommendations as necessary to the EHSC in open public meetings as always.

The IHC Board has committed to review of its benefits designs annually. It does so through open public meetings which are noticed in accordance with the Open Public Meetings Act as well as public hearing.

COMMENT: One commenter asked for confirmation that the reference at N.J.A.C. 8:91-2.3(a)5 to the HMO Plan with the $100.00 hospital inpatient copayment and the $10.00 copayment for other service options includes all of the benefits of the Individual Advantage $10.00 Option, such as prescriptions. The commenter states concern that if the benefits are different, the underlying public policy allowing for easy transition into other programs will not be seamless.

RESPONSE: The EHSC does not know specifically what Individual Advantage $10.00 Option is, but presumes that it is the same as the IHC Program's HMO Plan with the $10.00 copayment option. If that is the case, then yes, the benefits are all the same, including the prescription drug benefit (that is, the carrier retains the option of doing the prescription drug benefit through either the 50/50 coinsurance method or the copayment method). In defining which standard health benefits plans the EHSC will subsidize, the EHSC meant the IHC Program's HMO Plan using the $10 copayment option, not the $15.00 or $20.00 copayment option. There is no intention on the part of the EHSC to deviate the benefits from those specified by the IHC Board. The commenter will have to determine whether its Individual Advantage $10.00 Option comports with the requirements of the IHC Board.

COMMENT: One commenter stated concern that Plans D and E issued through network-based arrangements must comply with the HMO Plan's $10.00 option if using a point-of-service ("POS") method. The commenter stated that its Plan D POS product already uses a $15.00 in-network copayment, and that under the IHC rules, they could not offer both a Plan D POS product with a $15.00 copayment and a $10.00 copayment. The commenter suggested deleting the reference to paragraph (a)5 at N.J.A.C. 8:91-2.3(b), and instead relying only on paragraph (a)3 and (a)4 and the IHC Board-approved plans.

RESPONSE: The EHSC has made an additional review of the IHC Program rules, specifically N.J.A.C. 11:20-3, Standard Benefit Levels and Policy Forms, and does not draw the same conclusions as the commenter. If it is true, as a practical matter, that the IHC Board will not allow a carrier to offer both a Plan D POS product with $10.00 copayment and another Plan D POS product with a $15.00 copayment (the IHC Board has not faced this situation squarely), then the carrier would have to make the decision whether it wanted to give up one of the two product designs. The POS product with the $10.00 copayment would be the design acceptable to the EHSC. As the EHSC gains more experience with the Access Program and its integration with the IHC Program, this is an area which it may need to revisit, in conjunction with the IHC Board.

COMMENT: One commenter stated that the EHSC's definition of "selective contracting arrangements" does not specify that all such arrangements be duly registered with the Department of Insurance pursuant to rules recently adopted by that agency (see N.J.A.C. 11:4-37).

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The commenter strongly recommended that such language be added to the definition. In addition, the commenter suggested adding the following:

"Carriers are prohibited, when selecting among providers of health services for membership in the provider network, from discriminating against any health care professional on the basis of the type, class or category of health professional. In selecting health care providers for selective contracting arrangements, carriers shall contract with a sufficient number and range of health professionals, specialties, and practice settings to provide adequate access to the benefits package. Selection criteria used by a carrier's selective contracting arrangement shall include at a minimum the number, capacity, and geographic distribution of all health professionals within the designated service area."

RESPONSE: The EHSC has added language to the definition of "selective contracting arrangement" at N.J.A.C. 8:91-5.2 to clarify that the carrier's engagement of a selective contracting arrangement must be approved pursuant to N.J.A.C. 11:4-37. However, it should be noted that the EHSC is only subsidizing the purchase of insured contracts (without going into any technical discussions about indemnity carriers, service corporation carriers and HMOs, the EHSC will, for purposes of the Access Program, consider their respective contracting arrangements for the provision of benefits or services all to be insured), and additionally, it will only subsidize the purchase of such contracts from carriers under a participation agreement with the EHSC. Such carriers necessarily also will be operating in the IHC Program, and as such should be abiding by all the laws of New Jersey. The standards established by the EHSC for the Access Program are not in any way intended to circumvent any other laws governing a carrier. In order for a carrier to combine an insured contract with a selective contracting arrangement, it must obtain the approval of the Departments of Insurance and Health pursuant to N.J.A.C. 11:4-37. That requirement remains unchanged by the rules adopted at N.J.A.C. 8:91.

Although the EHSC may establish standards for what it is seeking in a participating carrier, and has done so at N.J.A.C. 8:91-5.4 and 5.7 specifically, the EHSC does not have regulatory authority over selective contracting arrangements generally. Rather, that authority rests with the Department of Insurance, in consultation with the Department of Health, pursuant to N.J.S.A. 17B:27A-54. There would be no merit in the EHSC adding the specific language suggested by the commenter regarding nondiscrimination among health care professionals and quotas in panels. It may be of some comfort to the commenter to know that, unlike HMO arrangements, insureds under a selective contracting arrangement may go outside of the contracted network and still receive benefits, albeit reduced benefits.

COMMENT: One commenter stated that the regulations should articulate the EHSC's interest in offering enrollees a fee-for-service option, with a fee schedule acceptable to the EHSC. The commenter stated that oversight is needed to assure that the fee schedule will not be anti-competitive, and suggested adding the following:

At N.J.A.C. 8:91-1.3: "(e) it is the policy of the Commission to promote the availability to Access Program enrollees of medical services covered by the standard health benefits (sic) on a fee-for-service basis, provided that such services are offered by a physician network (1) that includes 50% or less of the physicians practicing in any recognized medical speciality in any relevant geographical market on a non-exclusive basis and (2) that develops a fee scheduled approved by the commission pursuant to section 8:91-2.5(a) (25." and,

At N.J.A.C. 8:91-2.5(a): "(25) Actively supervising the fee schedules set by physician networks for the provision of medical services to enrollees in the Access program to determine whether those fee schedules are (1) adequate to provide enrollees with access to medical care of a quality reasonably comparable to that received by the general population and (2) consistent with the continues (sic) well-being and accomplishment of objectives of the Access program. The Commission shall approve any fee schedule submitted by a carrier that meets these two criteria."

RESPONSE: The meaning behind the commenter's statement and suggestion is somewhat unclear. The EHSC presumes that the commenter's use of the term "fee for service" is really a reference to non-network arrangements (which typically involve no negotiated fee arrangements). That is, the EHSC is presuming that the commenter is suggesting that the EHSC endorse the purchase of insured contracts wherein the covered person's selection of all health care providers is unencumbered. The EHSC believes it has done so already by stating that it will subsidize the purchase by Access Program enrollees of Plans D or E, offered with or without a network arrangement. The EHSC has never stated, or even implied, that Access Program enrollees should not have a choice in the insured product offering. Whether Access Program enrollees actually have a choice not to use a network arrangement under Plans D and E will depend upon whether any carriers offering Plans D and E without a network are willing to participate in the Access Program. Obviously, the EHSC cannot make any guarantees in this regard.

Using the scenario that the EHSC has chosen (that is, subsidization of the purchase of certain IHC Program standard health benefits plans), the EHSC cannot establish a separate fee schedule for the payment of health care providers. The IHC Board did establish criteria for carriers to follow in determining the maximum non-negotiated fee reimbursements on a reasonable and customary basis, paying provider charges up to the 80th percentile of the Prevailing Healthcare Charges System profile for New Jersey (available subject to certain restrictions and a fee from the Health Insurance Association of America, 1025 Connecticut Avenue, NW, Washington, D.C. 20036-3998), or an alternative fee profile upon a showing of actuarial equivalency. The EHSC is proceeding at this point on the basis that the standards for reasonable and customary established by the IHC Board are acceptable to the EHSC.

COMMENT: Two commenters strongly urged that the eligibility limit on income be set no lower than 300 percent of poverty.

RESPONSE: The commenters have not provided a basis for their request, and, therefore, the EHSC cannot respond on the merits of the commenters' reasoning.

The EHSC recognizes that reimbursements to hospitals for charity care is available for unpaid bills of those patients with incomes up to 300 percent of the Federal poverty level. The EHSC is also aware that the bulk of those who are uninsured and otherwise not eligible for Medicaid have incomes up to and exceeding 300 percent of the poverty level, though the largest proportion of uninsureds fall below 250 percent of poverty. Additionally, the EHSC is cognizant of the debates going on at the Federal level, and the shifts that have taken place regarding subsidy programs for the purchase of health insurance. In other words, there are many factors that the EHSC must consider before it determines what level of income to be the maximum for obtaining subsidies, including whether higher income levels should be phased-in as more subsidy dollars become available.

Following consultations with the EHSC's actuarial consultant (bids for which have now been completed), and further consideration of certain stated factors, the EHSC will be better able to determine whether eligibility for subsidies should go to 300 percent of poverty, or be limited to some lower level.

COMMENT: Three commenters questioned whether the subsidy scale would be published. Two commenters stated that the scale is important to the estimation of the number of uninsureds who might be supported by the Access Program. One commenter stated that the scale should be included with these rules, or released under a separate regulation open for public comment.

RESPONSE: The subsidy scales will be published, but not for public comment. Rather, when developed, and subsequently amended, the subsidy scales will appear in the New Jersey Register under the section on "Public Notices" only. Of course, the information will also be made available routinely to participating carriers, those persons on the EHSC's mailing list, and any other interested person upon request. The subsidy scales will be a matter of public information.

Certain guidelines for the subsidy scales are set forth in the statute and the rules. For instance, the subsidy scales will be designed to allocate lower subsidies as a person's income level increases. All enrollees will be required to contribute something towards the monthly premium, even those below the poverty level (perhaps no less than $5.00 on a single, parent/child(ren) or husband/wife contract, and no less than $10.00 on a family contract), but there is no guarantee that the subsidy curve will be a straight line, and, in fact, almost assuredly will not be. The subsidy scale will be designed so that there is a maximum cap, expressed as a percent of income, that eligible enrollees will be expected to contribute towards the premium for the lowest cost plan available to them, but the curve of the cap line also may not be straight.

The pricing structure of insurance contracts and the methodology for determining percentages of poverty level do not directly correlate, thus necessitating that the scale developed for a single person cannot be the same scale developed for a family, in the opinion of the EHSC. The EHSC intends that there will be multiple subsidy scales based on the type of insured contract for which the Access Program applicant intends to apply (that is, single person, husband/wife, parent/child(ren), family).

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Additionally, the number of subsidy scales may multiply based upon which carriers are participating in the Access Program, the counties in which the carriers are authorized to do business, and which carrier's standard health benefits plan is determined to be the "base plan" (lowest priced plan) in the respective counties in any one month. Currently, it is probable that there will be no more than four statewide subsidy scales (based on current carrier interest), but it is possible that there could be upwards of 60 subsidy scales, if the mix of participating carriers is of a particular nature. Also, the subsidy scales may change as frequently as monthly. (The change will affect new enrollees, and those treated as new enrollees due to change in status, but not current enrollees.) Thus, the mechanics of the subsidy scales are such that it is not practical or possible to publish them as a rule, and remain responsive to the changing characteristics of the Access Program market design.

The EHSC agrees that the publication of the subsidy scales will be useful in determining the total pool of potential Access Program enrollees, though it is less certain that the scales alone will provide substantial information on how many currently uninsured individuals will be covered (since the Access Program is not designed exclusively to cover only those not currently insured). The EHSC intends to publish the first set of subsidy scales as quickly as possible following consultation with the EHSC's actuaries.

COMMENT: Two commenters stated that while the Access Program allows enrollment on a first-come, first-served basis, the need for subsidies is most acute at lower income levels. Both commenters fear that higher income individuals, with possible better access to information, will garner the majority of the subsidy dollars. Both commenters suggested that a certain level of funds be reserved for certain income levels. One commenter suggested that 50 percent of the available funds be reserved to those eligibles at and below 150 percent of the Federal poverty level. The other commenter suggested that 25 percent of the available funds be allocated to each specified income level (below 150 percent; between 150 to 200 percent; 200 to 250 percent, and 250 to 300 percent).

RESPONSE: The EHSC agrees that the greater need for subsidy dollars is at the lower income levels. The EHSC will attempt to funnel more dollars to the lower income eligibles by allocating greater subsidy dollars at lower income levels, and directing its marketing efforts to those individuals most likely to fall into the lower income categories. However, the EHSC is currently committed to a first-come first-served program, and doubts that a program that caps the dollars available to any category based on eligibility-specific criteria can be first-come first-served. (The commenters' suggestions could backfire if large numbers of lower income individuals apply and hit the cap, possibly leaving otherwise allocated funds unspent.) Additionally, the EHSC notes that the legislation actually appears to focus on the temporarily unemployed and the working uninsured, who fall into all income levels, not necessarily only the lowest.

The EHSC intends to establish information networks through agencies and facilities operated by the Departments of Human Services and Labor to target people coming off of Medicaid and HealthStart Plus, and people who are or are becoming unemployed. The EHSC may try establishing communications networks with other state agencies, including the Departments of Health and Community Affairs, to target people requesting assistance through certain other noncategorical income-related assistance programs. The EHSC hopes that eventually it will have communication networks in place through various community-based organizations as well.

Obviously, the EHSC's targeting and marketing efforts are not readily apparent in the rules established at N.J.A.C. 8:91, so the commenters' concerns are understandable. The EHSC, however, is aware of the need to try to interject levels of equity in the Access Program, and will attempt to do so first through methods that impose the least administrative burdens on the EHSC and that do not work to unduly encumber the overall goals of the Access Program.

One other aspect of the assumptions underlying the Access Program: the EHSC has never assumed that the Access Program enrollee population will be fixed. That is, it is expected that a large proportion of people coming into the Access Program will leave it in less than a year (for instance, they become re-employed and their family income exceeds eligibility limits, they become re-employed and eligible for employer-sponsored health insurance, they go onto or return to the Medicaid system). Census data and specific studies support the EHSC's beliefs in this regard. Given this presumption, the EHSC believes that it is both impractical and undesirable to try to assure that no more than a certain percentage of subsidy dollars are ever spent on people at various levels of the income scale.

COMMENT: One commenter asked whether, once the $50 million is expended in the first year, the Access Program will then pay the hospital bills of the identified eligible enrollees, but not their premiums.

RESPONSE: No. The commenter should refer to other comments and responses to gain a clearer understanding of how the Access Program is intended to work.

COMMENT: One commenter stated that mothers coming off of the HealthStart Plus Program, as well as infants coming off that program, should be given automatic admission to the Access Program under their HealthStart Plus carrier. (HealthStart Plus provides maternity and preventive and primary care for pregnant women and newborns with family incomes between 185 and 300 percent of the federal poverty level who are uninsured. The HealthStart Plus program has used a single carrier—an HMO—for the past two years, and currently covers approximately 1,000 women and infants.)

RESPONSE: Anyone enrolling in the Access Program should have a choice of whether to purchase an indemnity-designed plan or the HMO Plan, as well as the participating carrier with which they want to contract. It is unclear whether the commenter is suggesting whether people coming off HealthStart Plus should be expected to give up that choice or not. If so, the EHSC could not endorse such a suggestion at this time. Additionally, there is no absolute guarantee that the carrier for HealthStart Plus will apply to be a participating carrier with the Access Program, though the carrier is among those that has shown an interest in participating in the Access Program.

The EHSC doubts that a program can be truly first-come, first-served if certain categories of people are automatically enrolled, which means that some set-aside provisions must be made for them. (See the previous discussion above regarding specified dollar allocations to specified income levels.)

COMMENT: One commenter stated that limiting persons currently covered under an individual policy to a specified annual open enrollment period penalizes those persons who otherwise qualify for Access Program enrollment simply because they'e taken the initiative to purchase coverage on their own. Additionally, depending upon when the open enrollment period is, these people could be prevented from obtaining any subsidy, because the funds may already be depleted. The commenter suggested that, at a minimum, there should be an initial open enrollment opportunity for all persons when the Access Program is made available, regardless of whether they currently have individual coverage. However, ideally, persons who are currently covered under individual plans should have no restrictions on entering the Access Program if the meet other eligibility criteria.

RESPONSE: The EHSC disagrees with the commenter. While the Access Program is not designed to enroll only those people who are uninsured, one of its primary objectives is to provide access to those who do not have, and cannot afford, to purchase coverage. People who currently have an individual policy have a demonstrated ability (and desire) to purchase health insurance, albeit that the premiums may represent a financial burden. Additionally, the EHSC does not believe that merely shifting large numbers of people from the rolls of the privately insureds (whether insured under individual or group plans) to the rolls of the subsidized insureds can ever achieve the goal of increasing the number of insureds in New Jersey.

The EHSC does not presume that the population of Access Program enrollees will remain stagnant; rather, the EHSC expects movement in and out of the Access Program to be somewhat dynamic. So, while it is probable that the level of funds available for open enrollment, if open enrollment is held late in any calendar year (the most likely scenario), may be limited, it is not necessarily true that the funds will be depleted. Additionally, if the open enrollment is held late in any calendar year, projections of fund availability will include funding levels anticipated for the following calendar year. Thus, it cannot be assumed that the Access Program necessarily will operate to the total disadvantage of those persons currently privately insured in any calendar year.

COMMENT: One commenter stated that, to prevent overinsurance, a person with current individual coverage who becomes eligible for and enrolls in the Access Program (obtaining coverage) should be required to terminate his or her old policy.

RESPONSE: The EHSC agrees with the commenter, and indeed assumed that it was implicit from the design of the Access Program that

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duplicate coverage was impermissible. (See N.J.A.C. 8:91-3.3 and 6.4.) N.J.A.C. 8:91-6.3 has been amended upon adoption to reflect this position more clearly.

COMMENT: One commenter stated that there appears to be no limit on how long applications for the Access Program are valid once a waiting list is developed, and questioned whether, if they are valid indefinitely, such a situation is not administratively burdensome.

RESPONSE: Applicants on the waiting list are not presumed to be eligible for enrollment indefinitely, but they also are not presumed to have become ineligible simply by virtue of the amount of time they have been on the waiting list. The Access Program will verify that the information previously submitted by an applicant is still accurate prior to enrollment of the applicant.

The waiting list really is a tool for determining positions in time. It also will be used to shorten the application process, hopefully keeping the paperwork at a reasonable level for both the Access Program and the applicants. The EHSC currently believes that it would be just as burdensome, if not more so, to automatically "dump" people from the waiting list on a periodic basis, requiring them and Access Program personnel to go through the entire application process again. Additionally, the EHSC wants to avoid the possibility that an admittedly eligible applicant dumped from the waiting list could end up on the waiting list again if, by the time the reapplication process is completed, available monies have been reallocated.

COMMENT: One commenter suggested that the income determination (at N.J.A.C. 8:91-3.4(b)3) for unemployed persons eligible for government programs be annualized, or for a 12-month period.

RESPONSE: The typical government program for which unemployed persons would be eligible, unemployment compensation, is not typically allocated on an annual basis. (Eligibility for unemployment compensation typically is for no more than 26 weeks, though extensions are sometimes granted.) Annualizing their income from such programs would not provide an accurate picture of either their current or expected income.

COMMENT: One commenter questioned the reason for requiring an "attestation of assets" at N.J.A.C. 8:91-3.3(b), noting that the definition of "gross income" at N.J.A.C. 8:91-3.2 does not include assets.

RESPONSE: The rationale for performing an assets test is that, if two people have equivalent incomes, but one has greater assets, the person with the lesser assets should be receiving the greater assistance.

The EHSC believes that, for people who are expected to be in the Access Program a relatively short period of time, it is unwise to expect or require them to divest themselves of their asset base. The EHSC believes that people who only need short-term help will be better able to avail themselves of that short-term help, move on, and not return for additional help if they do not deplete their asset base. As stated elsewhere in the responses to comments, the EHSC has reason to believe that a significant segment of the Access Program's population will be out of the Access Program within six months of enrollment. Hence, the EHSC decided to forego performing an assets test upon initial application, and to rely solely upon gross income evaluation instead, partly for administrative ease, but primarily to avoid creating barriers to both entering and exiting the Access Program.

When people are in the Access Program for more than a year, and are expected to be on assistance for a longer term, the cost benefit associated with reviewing their respective assets is more reasonable. Additionally, impediments for entering the Access Program no longer exists. At this point, as indicated by the rules, the EHSC believes it is appropriate to impose an assets test. (It may be that the threshold at which the assets test is performed changes as the EHSC obtains more information about the enrollee population.)

It should be noted that the EHSC has not fully developed asset test methodology for the Access Program. The rules for attestation and evaluation of assets will be set forth in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. The EHSC anticipates promulgation of such rules before the end of 1995.

COMMENT: One commenter stated that the language at N.J.A.C. 8:91-3.3(a)3 and 5, when read together, appears to require applicants to be employed and uninsured and eligible for COBRA in order to be eligible for the Access Program, and suggested they be reworded to distinguish the criteria as separate eligibility categories.

RESPONSE: The EHSC agrees, and has revised N.J.A.C. 8:91-3.3(a) accordingly upon adoption.

COMMENT: One commenter suggested that, for consistency with N.J.A.C. 8:91-3.3(a)6, N.J.A.C. 8:91-3.6 should insert the phrase "during the preceding 12 months" after "(other than limited benefits policies)".

RESPONSE: The EHSC agrees, and has revised N.J.A.C. 8:91-3.6 accordingly upon adoption.

COMMENT: One commenter stated that the EHSC's reliance at N.J.A.C. 8:91-2.7(e) upon the IHC Board's "same or similar" language at N.J.A.C. 11:20-12 is flawed with respect to POS plans. N.J.A.C. 11:20-12 currently allows someone to move at any time from an HMO Plan to Plans D or E, nd that as such, a consumer could select the HMO for a lower rate, and at the point of needing services outside a network, switch to a POS-based Plan D. Additionally, N.J.A.C. 11:20-12 allows movement from Plan E to Plan D at any time, but technically, allowing someone to move from a pure indemnity Plan E to a POS Plan D is an upgrade. The commenter suggested that movement between the HMO Plan to a POS Plan D or Plan E be limited to the annual open enrollment period (in October under N.J.A.C. 11:20-12, for a January 1 effective date), as well as for movement from a pure indemnity Plan E to a POS Plan D.

RESPONSE: The EHSC disagrees with the commenter's suggestion. To the greatest extent possible, the EHSC wants Access Program enrollees to be treated the same as any other purchaser of individual standard health benefits plans. The EHSC believes at this time that it would be inappropriate for it to impose restrictions in movements from one plan to another which are different from those imposed by the IHC.

Additionally, the EHSC notes that the selection problem is one primarily for the carriers, not the EHSC. Subsidy dollars do not change for the enrollee based upon the plan they choose. Subsidy is based upon the lowest priced plan available to the enrollee. If an enrollee elects something other than the lowest priced plan, the enrollee must pay the additional uncovered premium. The EHSC believes that, perhaps unlike the general population, most Access Program enrollees will be unable to significantly adjust their budgets to purchase a more expensive plan only when they expect to need the additional benefits. Thus, the Access Program already has incentives built-in to minimize the selection problem perceived by the commenter.

The commenter's complaint is with the IHC rules generally, and the suggestion should be directed to the IHC Board, where the regulatory authority with respect to defining "same or similar" resides.

COMMENT: One commenter stated that the reference to N.J.A.C. 8:91-5.5(f) at N.J.A.C. 8:91-2.4(a)9 is incorrect, since N.J.A.C. 8:91-5.5(f) is about applying for a participating contract, not terminating it. The commenter suggested that the correct reference is to N.J.A.C. 8:91-5.7(f).

RESPONSE: The EHSC agrees, and has revised N.J.A.C. 8:91-2.4(a)9 accordingly upon adoption.

COMMENT: One commenter stated that the reference at N.J.A.C. 8:91-5.11(a) to N.J.A.C. 8:91-2.9 is incorrect, and instead should be to N.J.A.C. 8:91-2.10.

RESPONSE: The EHSC agrees, and has revised N.J.A.C. 8:91-5.11(a) accordingly upon adoption.

COMMENT: One commenter suggested that the "30 day prior notice for change in contribution requirements" set forth at N.J.A.C. 8:91-2.7(f) should be written notice.

RESPONSE: The EHSC agrees, and has revised N.J.A.C. 8:91-2.7(f) accordingly upon adoption.

COMMENT: One commenter suggested that a greater distinction in the rules should be made between the application to determine (Access Program) eligibility and the application for coverage under a health benefits plan, specifically at N.J.A.C. 8:91-2.8, which addresses the processing of applications and enrollee information.

RESPONSE: The EHSC agrees, and has revised N.J.A.C. 8:91-2.8 in an effort to better distinguish between the application for the Access Program, and the application which Access Program enrollees will submit for coverage by a specific carrier.

COMMENT: One commenter stated that there appears to be no limit on the number of times the base plan or the premium for the base plan can change. The commenter questioned whether the base plan could change each month for new entrants, and whether the subsidy is constant for a year for an enrollee. The commenter further questions, if the subsidy amount for each enrollee is constant, whether reference to a rolling premium is needed.

RESPONSE: The base plan can change as frequently as monthly. Changes in the base plan—and consequent subsidy scale recalculations—will affect new enrollees, those current enrollees whose status changes, and all current enrollees upon their anniversary dates (or whenever their carrier may change the premium, such as an immediate change in mandated benefits). Upon further reflection, the EHSC agrees that

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references to a rolling premium are unnecessary at this time, and N.J.A.C. 8:91-2.2 and 2.7 have been revised accordingly upon adoption.

COMMENT: One commenter noted that N.J.A.C. 8:91-3.5(c) states that changes that may affect a person's eligibility for the Access Program should be reported immediately, but both N.J.A.C. 8:91-4.4(a) and 6.3(e) states that enrollees must give notice within 30 days.

RESPONSE: The three references are not inconsistent, since 30 days is the outside limit for providing the information. The EHSC does not believe a change at N.J.A.C. 8:91-3.5(c) is necessary.

COMMENT: Two commenters noted that N.J.A.C. 8:91-5.4(j) indicates that the date of a person's application with the Access Program serves as the date for determining preexisting conditions and questioned the appropriateness of this provision. One commenter stated that, in situations where the customer is applyig for a future effective date, or when the customer is put on the Access Program waiting list, it appears inappropriate to give them credit for preexisting conditions from the point of application.

RESPONSE: The EHSC disagrees. The EHSC does not want in any way to penalize Access Program applicants and enrollees because of inefficiencies or insufficient funding in the Access Program. The EHSC does not believe that carriers will incur undue selection problems, given that Access Program enrollees will not control efficiencies in the administrator's processing functions, when a waiting list is instituted, or when applicants are moved up and off the waiting list. That is, once the applicant submits their application for enrollment in the Access Program, substantially all of the timing issues are beyond the control of the applicant/enrollee, and thus, no applicant/enrollee can be viewed as "gaming" the system or playing the odds. For that reason, the EHSC believes it is appropriate to treat the Access Program application date as the effective date. In this manner, people coming off of Medicaid, COBRA or other coverage who apply promptly to the Access Program (prior to the end of the permissible 30-day lapse) do not incur preexisting condition exclusion provisions due to extended lapses which are essentially artificial lapses, not lapses which occur at the option of the applicant/enrollee.

As regards future effective dates, the EHSC does not anticipate that it will accept or process Access Program enrollees who will be applying for prospective effective dates.

COMMENT: One commenter strongly urged that the educational materials developed for the Access Program include a guide to decision-making which assists enrollees in choosing the most appropriate health benefits plan for their needs. Additionally, materials prepared regarding HMOs should include specific information concerning providers, location sites of services and the hospitals affiliated with the HMOs.

RESPONSE: The materials prepared by the EHSC for the Access Program are intended to be comprehensive, and may include questions that applicants/enrollees should consider before they choose a carrier and health benefits plan. However, the Access Program will in no way endorse one carrier or health benefits plan over another. (Certain decisions have already been removed for those enrollees below 150 percent of poverty, since their choices do not include Plan D.)

The HMOs will prepare their own, company-specific material. The material typically includes primary care provider names (including gynecologists), their degree and practice designations, and their locations. The material often does not include hospital affiliations, but the information is available upon request.

COMMENT: One commenter stated that joint enforcement of regulations authorizing or implementing the various aspects of the Access Program pursuant to N.J.A.C. 8:91-1.4(b) should be carefully delineated, with areas of responsibility specified. The commenter stated that multiple oversight typically leads to confusion, misdirection and lack of overall responsibility and control.

RESPONSE: The EHSC disagrees that it is necessary to delineate the responsibilities of the various agencies in the rules, and would be concerned that such a delineation would possibly prove to be under-inclusive, creating ambiguities in authority. As a practical matter, grievances regarding the health benefits plans and their terms, or the manner in which a carrier is interpreting the terms, should go to the IHC Board, and ultimately may be enforced through the Department of Insurance. Grievances about eligibility standards, enrollment processing, subsidies, etc., should be referred to the EHSC, where enforcement will be partly through statute, and partly through contract terms. Any problem which appears related to the Access Program may first be reported to the EHSC, but depending upon the specifics involved, the EHSC may find it necessary to refer the issue to another agency, whose enforcement authority may more appropriately rest.

COMMENT: Two commenters stated that the grievance and appeal provision (N.J.A.C. 8:91-2.12) is not clear as to whether there will be a review board or panel within the Access Program or a separate board or panel outside of the Access Program.

RESPONSE: The provisions of N.J.A.C. 8:91-2.12 are intended to separate the types of grievances between those under control (thus, review) of the Access Program and those that are under control of the IHC Board (or Commissioner of Insurance). So, depending upon the type of grievance, review may take place within the Access Program, or through another entity. The EHSC believes N.J.A.C. 8:91-2.12(a) and (b) adequately explain which types of grievances will be reviewed within and outside of the Access Program.

COMMENT: One commenter stated that in 1993 and 1994 carriers have been permitted by the IHC Board to offer approved alternative health benefits plans in lieu of the Board's standard health benefits plans, and suggested that N.J.A.C. 8:91-5.4 be reworded to recognize the use of alternative health benefits plans approved by the IHC Board.

RESPONSE: The EHSC understands and appreciates the suggestion, but as a practical matter, believes that such a clarification will be unnecessary. The IHC Board has stipulated that all new policy issues (and renewals) occurring on or after October 1, 1994 must be on standard health benefits plan forms, and the use of alternative forms will be phased out through October 1995. It is probable that the Access Program's first enrollee will not have policy effective dates prior to October 1, 1994, and thus, they will be issued policied on the standard forms only.

COMMENT: Two commenters stated that the EHSC should require that the portion of premium not met by the Access Program subsidy must be paid by the individual, and not be paid on his or her behalf by an employer or other entity.

RESPONSE: The EHSC agrees with the commenter with respect to employers paying an enrollee's contribution on behalf of the enrollee. The EHSC has attempted to design the Access Program so as not to unduly entice employers to drop their own group plans (or revise the class of employee eligible for the group plan) with the Access Program serving as the substitute. The EHSC readily admits that the design of the Access Program is not foolproof in this regard. The EHSC obviously would view such payments as income, but recognizes that it might be to the advantage of certain employers and employees to work out an arrangement so that the money is not reported. However, the EHSC is uncertain about the administrative costs and systems which may be necessary to track and enforce the prohibition. In any instance, the EHSC believes that the specific suggestion is one that will need to be published as a new rule, and not a change which can be incorporated herein upon adoption.

The EHSC is less certain about prohibiting any "other entity" to pay on behalf of the enrollee. The term is very broad, and could include such persons as relatives, guardians and trusteeships, legally documented and otherwise. For instance, it is not uncommon for grandparents, aunts and uncles toprovide some monetary support of both adults and minors notwithstanding that they have no legal obligation to do so. The EHSC is unclear whether it is truly problematic if the payment received for a contribution of premiums comes from a relative outside of the enrollee's immediate family when the enrollee's family income meets the Access Program requirements. There are other instances where other entities might offer to pay for enrollee contributions which the EHSC would find questionable, at least on first blush.

The commenter has raised issues that the EHSC has not fully explored. The EHSC will do so in the near future.

COMMENT: One commenter suggested that audits performed pursuant to N.J.A.C. 8:91-4.4 (random audits of enrollees to verify reported income and eligibility) and data-sharing with other governmental agencies in order to perform income verification should be made explicitly subject to applicable confidentiality requirements as required by law.

RESPONSE: The EHSC agrees and has revised N.J.A.C. 8:91-4.4 accordingly upon adoption.

COMMENT: Three commenters questioned the audits of carriers by the EHSC. One commenter stated that there should be some obligation upon the EHSC to ensure that the costs for audits passed off to the carrier are reasonable. One commenter suggeted that the cost of an audit be shared by the carrier and the EHSC, rather than being borne solely

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by the carrier. This commenter also suggested limited the number of audits in any given year, especially if the carrier is paying for the associated expenses. Additionally, the commenter stated that the reference to audits related to sales, advertising and accounting practices for commissions and expense allocations appears excessive and questioned the relevance.

RESPONSE: The relationship between the EHSC and participating carriers is symbiotic. There would be little incentive on the part of the EHSC to subject carriers to unreasonable, excessive audits or to saddle carriers with unreasonable audit costs. Such costs ultimately affect premium rates, and the EHSC pays premiums on behalf of its Access Program enrollees. The EHSC is uncertain why the commenters would assume that it would be unreasonable or excessive with respect to audits, and believes that the commenters have failed to consider the EHSC's overall responsibility to run an effective subsidy program. (The measure of "effective" isn't limited to the number of persons obtaining insurance with the help of the subsidy.)

While N.J.A.C. 8:91-2.4(a)12 references periodic audits, N.J.A.C. 8:91-5.7(a) specifically refers to the possibility of an annual audit. The EHSC does not anticipate seeking audits more frequently than annually, unless there are higly unusual circumstances involved. The usefulness of more frequent audits in relation to the costs involved is questionable.

The reference at N.J.A.C. 8:91-2.4(a)12 to sales, advertising, and accounting practices for commissions, etc., are merely descriptions of what practices are likely to be audited, and are among a list of items common to, but not as expansive as, Department of Insurance market conduct reviews. The EHSC believes that audits of these areas (among others) are very relevant to a determination of the effectiveness of the Access Program's choice of carriers, as well as the Access Program's overall design.

COMMENT: One commenter noted that participating carriers are required to collect and submit data on a periodic basis pursuant to N.J.A.C. 8:91-2.4(a)2. The commenter suggested that it would ease administrative reporting requirements for the carriers if the reporting requirements for the Access Program are the same as for the IHC Program and the SEH Program.

RESPONSE: The EHSC understands the commenter's concerns, and agrees that much of the data will be the same, and so, reports from the IHC and SEH Programs may be utilized. However, there will be certain data that the EHSC will need to measure the strengths and weaknesses of the Access Program which neither the IHC Board nor SEH Board will want. Therefore, not all data requests can or even should be exactly the same.

COMMENT: One commenter suggested that carriers be required to provide notice about health care provider network changes only on a periodic basis (semi-annually or quarterly), and not every time a change occurs. (See N.J.A.C. 8:91-2.4(a)10.) The carrier noted that a carrier with a large network otherwise may find the reporting requirement burdensome. An additional commenter questioned the purpose of the notification and how the EHSC might use or act on the information.

RESPONSE: Except with respect to hospital affiliations, the EHSC agrees that a periodic report is probably appropriate. Semi-annual reports, or reports whenever the carrier updates its network booklet, whichever is more frequent, should be sufficient. With regard to hospital affiliation, the EHSC expects prompt notification from all carriers using network-based arrangements similar to the notice required to be provided by HMOs to health care providers and enrollees pursuant to N.J.S.A. 26:2J-11.1. N.J.A.C. 8:91-2.4(a)10 has been revised accordingly.

The notification is useful for several purposes. When a participating carrier contracts with the EHSC for the Access Program, it does so under a certain set of conditions, including an agreement that it is able to service certain populations. The EHSC needs to be kept apprised of significant changes in those conditions. Although the EHSC does not make guarantees to all Access Program enrollees, it is nevertheless responsible for operating an effective program. Changes in health care provider networks may create gaps in the effectiveness of the program with respect to certain segments of the enrollee population. (Of course, expansion in networks will enhance effectiveness, and is a point that shouldn't be overlooked either.) Therefore, notification of provider network changes is a key to evaluating the Access Program's effectiveness, its choice of carriers, the ability of the Access Program and the carrier to penetrate certain geographic areas, and is a basis for determining whether a continued relationship between a carrier and the EHSC is viable.

COMMENT: Two commenters stated that there should be parameters upon the EHSC's ability to limit career participation in the Access Program at N.J.A.C. 8:91-5.3, to avoid any actual or apparent arbitrariness on the part of the EHSC.

RESPONSE: The EHSC believes that the parameters for its discretion are sufficiently stated, especially when N.J.A.C. 8:91-5.3, 5.4 and 5.7 are read together. While the EHSC is currently interested in having as many participating carriers as possible, and does not intend to limit any carriers, future experience may clarify (for both the EHSC and the carriers) that there is a point of diminishing returns in terms of the number of carriers necessary to service the Access Program, or from an administrative burden perspective for the EHSC in trying to coordinate the various functions of the program with carriers. The EHSC does not believe that its desires to serve the best needs of its enrollees and its own administrative infrastructure will appear, or in fact be, arbitrary.

COMMENT: One commenter stated that the standards for continued carrier participation at N.J.A.C. 8:91-5.7 are, in many instances, vague or problematic. The commenter stated that some limits on EHSC discretion should be imposed with respect to N.J.A.C. 8:91-5.7(a)1 regarding the needs of the Access Program with respect to enrollment and administration. The commenter stated that N.J.A.C. 8:91-5.7(a)2 regarding conflicts of interest and appearances of impropriety could be used to keep carriers from both sitting on the EHSC and participating in the Access Program, contrary to statutory intent. The commenter stated that N.J.A.C. 8:91-5.7(a)4, regarding complaint ratios failed to recognize that all complaints are not necessarily valid. Additionally, the commenter states that N.J.A.C. 8:91-5.7(a)11, regarding evidnece of fraudulent activity by the carrier should specify the level of proof necessary. The commenter notes that at N.J.A.C. 8:91-5.7(e), carriers may request a hearing if the EHSC decides to cancel or nonrenew the participation contract, and questions under what circumstances, if any, the EHSC would contemplate not providing such a hearing.

RESPONSE: It should be understood that the language at N.J.A.C. 8:91-5.7(e) is intended to allow a participating carrier to request a hearing as a right. As specified at N.J.A.C. 8:91-5.7(e), the carrier shall have the right to request a hearing if the EHSC disapproves the carrier's continued participation; the EHSC does not know of any circumstances in which a hearing would not be provided. Whether the hearing is summary, is determined to be a contested case heard before the EHSC, or a contested case referred to the Office of Administrative Law is another matter.

The EHSC understands the commenter's concerns with respect to the specifically cited provisions, but believes that most of the provisions are adequate in nature and wording, given the purpose for which intended, and given that a hearing will be granted as a matter of right. (The rules are a broad outline of the basis for the contract to be negotiated between carriers and the EHSC. To the extent that areas of the rules leave certain substantive or administrative details open, those are areas which may become subject to contract negotiation. The EHSC recognizes, for instance, that "complaint ratio" is a term of art that may require further definition for purposes of participating carrier contracts.

The EHSC does agree that N.J.A.C. 8:91-5.7(a)2, regarding conflicts of interests and appearances of impropriety, could be misconstrued. The intent of the EHSC was not to imply that a carrier might be foreclosed from both sitting on the EHSC and acting as a participating carrier. Rather, the EHSC was more concerned about a carrier being both a participating carrier and an administrator or intermediary for the Access Program, perhaps through affiliates or subsidiaries. The EHSC has taken precautions through the Request for Proposal for bids for intermediary positions which should eliminate conflicts and appearances of impropriety. Therefore, the EHSC believes it is reasonable to remove N.J.A.C. 8:91-5.7(a)2 at this time, and has done so upon adoption.

With respect to the remainder of the provisions, the EHSC does not intend to be unreasonable or arbitrary in administering the Access Program. However, it must be understood that the level of detail which many commenters want is not practicable for the Access Program at this time either for enrollees, carriers or the general administration of the subsidy program.

COMMENT: Four commenters stated that the allocation of administrative expense language (between the EHSC and participating carriers) is too loose, and suggested several alternatives. One commenter recommended establishing either a ceiling on the carrier's share of the administrative expenses or an exclusive list of services for which the carrier may be charged. One commenter suggested that the costs be allocated based on volume or on a per member basis, with limits or caps on the amount

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of expenses for which a carrier would be liable. One commenter stated that the administrative costs allocated to carriers must be fixed prior to a carrier applying to participate, and should be allocated in two components: one being a per-issue expense for costs related to marketing of the Access Program, enrollment and disenrollment; the other being for billing, collection, and other maintenance and administrative-type costs.

RESPONSE: As stated previously, certain operational aspects of the Access Program remain to be negotiated between the EHSC and the carriers interested in participating. The administrative expense allocation is one such provision. The EHSC believes that the negotiation process should be dynamic, and thus, disagrees that the administrative expense allocation should be set in stone in the rules prior to carriers applying to be a participating carrier.

Whatever agreement is reached, all carriers of a like type will be treated the same under the participation contract. That is, the administrative expense allocation will clearly be the same for all indemnity carriers, but the allocation formula may or may not be slightly different from that agreed upon with HMOs (though the allocation will be equitably formulated). The EHSC assumes that the terms of the contract will be subject to renegotiation from time to time based upon accumulated experience of the parties involved.

The EHSC does not intend, and has not implied, that carriers will shoulder the whole burden of the administrative costs of the Access Program. However, the EHSC will have to be convinced as to what type of caps will be appropriate, whether they should be across all administrative expenses, or specific to only certain expenses. The EHSC does tend to favor some type of per-enrollee-based allocation method, but has not become wedded to any one specific formula.

The EHSC hopes that the participating carrier contract negotiation process will begin in earnest very shortly.

COMMENT: One commenter requested clarification that each carrier may market its standard health benefits plan(s) separately but in conjunction with the EHSC's marketing efforts for the Access Program.

RESPONSE: Yes, carriers are expected to do their own marketing of their products. The EHSC intends only to market the Access Program. The EHSC will supply applicants/enrollees with the carrier-specific material, but the EHSC anticipates that material will be provided to the EHSC by the carriers, and that it will be the same as, or substantially similar to, the material that the carriers would provide to any interested individual. The EHSC does not intend to do any marketing, per se, on behalf of any carrier, nor does it expect any carrier to do any specific marketing on behalf of the Access Program, but both marketing efforts could and should be ongoing and simultaneous.

COMMENT: One commenter stated that if the EHSC's marketing efforts for the Access Program are not successful, agents should be brought into the program. Inasmuch as the agents should be paid a commission for each enrollee, any agent commissions paid should be reflected as a credit against the 75 to 85 percent loss ratio dividend formula at N.J.A.C. 8:91-5.10(e).

RESPONSE: The EHSC fully anticipates that its marketing efforts will prove successful. If they do not, however, the EHSC might consider using alternative marketing systems. It is too early to have any details as to how the system would be designed, and clearly, the EHSC can make no promises.

COMMENT: One commenter stated that, at N.J.A.C. 8:91-5.2, the definition of "actual claims incurred loss ratio" should be amended so that actual incurred claims includes usual incurred but not reported ("IBNR") estimates. The commenter questioned what was meant by the term "actual."

RESPONSE: The EHSC does not believe that a change upon adoption is necessary. Actual claims incurred, as defined at N.J.A.C. 8:91-5.2, includes such reserves as are normally included in the calculation of incurred claims. Should the EHSC choose to accept a predetermined reserve additive, as the IHC Board adopted in its reporting requirements, it will be stated on the loss ratio reporting form. Any such determination will be made by the EHSC in consultation with its actuarial consultant when the reporting form is designed.

The use of the word "actual" was intended to signify that claims and claim reserves would be used as opposed to estimates based upon projections and assumptions utilized in the determination of premiums.

COMMENT: Two commenters stated that N.J.A.C. 8:91-5.4(1), which requires participating carriers not to report administrative expenses, dividends or credits payable to the Access Program either as claims paid or as a reduction in premium pursuant to N.J.S.A. 17B:27A-9 or 17B:27A-12b, is within the purview of the IHC Board, and not the EHSC, and therefore, should be removed from these regulations.

RESPONSE: Following further consultation with the Technical Advisory Committee of the IHC Board, the EHSC agrees, and has deleted the provision upon adoption.

COMMENT: One commenter observed that the timing of the loss ratio report for the Access Program (60 days after the end of the calendar year) is different from the annual August 15 date established for the IHC Program, and questioned whether the Access Program deadline provided for sufficient time for run-out claims. The commenter noted that, additionally, in specifying the credit or dividend formula, the time periods for determining any amounts owed pursuant to N.J.A.C. 8:91-5.10(e)1 and (e)2 are inconsistent with the time period for determining amounts owed pursuant to N.J.A.C. 8:91-5.10(e)3, because of the different reporting requirements.

RESPONSE: The EHSC recognizes that, whatever date it chooses, the primary issue for the Access Program is the carrier's calculation, and the Access Program's review and acceptance, of each carrier's claim reserves. Clearly, the later the reporting date, the easier it will be for the Access Program to review and accept each carrier's report, or alternatively, the more reasonable and accurate any nominal run-off percentage specified by the Access Program would be. Additionally, if the date for reporting coincides with that of the annual report for the IHC Program, then reporting would be simpler for carriers. For the reasons stated, the EHSC believes that it is better to establish the date specified for filing of loss ratio reports with the IHC Board as the same date for filing of loss ratio reports with the Access Program. The EHSC has revised the rules upon adoption accordingly.

COMMENT: One commenter questioned whether there is a specified format for the loss ratio report (a form or directions), and whether the report will be in aggregate for the Access Program, or if Plans D, E, and the HMO Plan will be reported separately.

RESPONSE: There will be a specific format for the loss ratio report, though it has not been developed yet. A form with accompanying directions is anticipated. There probably will be similarities between the report for the Access Program and that for the IHC Program. Plans D, E and the HMO Plan will need to be reported separately.

COMMENT: One commenter stated that the proposed regulatory scheme forces carriers to combine products offered through the individual commercial and subsidized markets while segregating the experience pools and differentiating the loss ratios between the two markets, jeopardizing a carrier's competitiveness in the individual market. As an example, the commenter assumed a product could be offered by a carrier for $200.00 (with $50.00 for administration and profit) in the individual market, and for $120.00 (with $18.00 for administration and profit) in the subsidized market, the assumption being, at least in part, that the subsidized market population is likely to be younger and healthier. The commenter stated that the "blended rate" anticipated by the proposed regulatory scheme—assuming 50 percent sales in each market—would result in a $160.00 charge for the product in both markets. The commenter stated that at this price, the carrier would have to refund about $40.00 to the Access Program for each subsidized enrollee, and would lose money on each non subsidized policy.

The commenter proposed a regulatory change to combine the risk pools for purposes of determining loss ratios and refunds. The commenter stated that the change would make for a more "seamless" system, in which low-income individuals and families could move freely between the individual and subsidized markets as their income levels changed. Otherwise, the commenter suggests that the two markets should be segregated for purposes of product characteristics, just as the markets are proposed to be segregated with respect to experience pools.

RESPONSE: The EHSC disagrees with the commenter's analysis of the regulatory scheme, as well as the conclusions the commenter draws from the example. The regulatory mechanism does not require segregation of the experience pools between subsidized and nonsubsidized individuals. On the contrary, there is to be only one "pool" of individuals; hence, the requirement for a "blended" (community) rate. Pursuant to N.J.S.A. 17B:27A-6, the standard health benefits plans established by the IHC Program are to be offered on a community-rated basis, meaning that "... the premium for all persons covered by a contract is the same, based on the experience of all persons covered by that contract, without regard to age, sex, health status, occupation and geographical location." (See N.J.S.A. 17B:27A-2.)

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While it is true that the Access Program is requiring carriers to obtain a higher loss ratio than the minimum loss ratio required to be achieved under the IHC Program (N.J.S.A. 17B:27A-9e), it was never anticipated that the contracts would somehow be priced differently, or that the loss ratios will be entirely segregated either. For purposes of determining whether the carrier has met its loss ratio requirements under N.J.S.A. 17B:27A-9e (that is, that a 75 percent loss ratio has been achieved for the policy form) the carrier will combine all of the claims data for all persons under that policy form, regardless of whether the person is enrolled through the Access Program or not. However, when the carrier determines whether it has met the 85 percent loss ratio requirement under the Access Program, it will look only at its Access Program business.

The commenter's example is incomplete, because it does not stipulate what the loss ratio is for either block of business. Moreover, it appears that, from the commenter's assumptions that $40.00 per enrollee would be paid back to the Access Program, and $40.00 would be lost on all of the other contracts, the commenter does not truly understand how loss ratio calculations or the dividend formula set forth at N.J.A.C. 8:91-5.10 work.

Assuming that, in fact, the carrier's claim payments for the nonsubsidized individuals equalled $150.00 (that is, $200.00 − $50.00), and the claim payment for Access Program enrollees equalled $102.00 (that is $120.00 − $18.00), then conceivably, the carrier's average claim payment would be $126.00. This means the carrier has met the 75 percent loss ratio requirement ($126.00/$160.00 = .7875), and thus, there is no refund to anyone pursuant to N.J.S.A. 17B:27A-6. However, the carrier has not met the 85 percent loss ratio requirement for its Access Program enrollees ($102.00 / $160.00 = .6375). The carrier would owe approximately $13.20 per Access Program enrollee using the fomula at N.J.A.C. 8:91-5.10(e):

.75 [(.85 − .75)($160.00)] + .15[(.80 − .75)($160.00)] = $13.20. (The formula is designed to allow carriers and the Access Program to share in the "excess" premium collected, so that, technically, while an 85 percent loss ratio is expected, an 82.5 percent loss ratio is the practical outcome.) There is not enough information to determine whether the carrier has lost money, but if the administrative expense and profit load is true to the commenter's assumption, it is probable that little or no profit was made on these policies as a whole.

This not to say that a carrier may never lose money under the scenario presented. Claims payments or administrative expenses in any calendar year may exceed anticipations. This is true regardless of whether the carrier participates in the Access Program. The carrier has the right and obligation to determine what margins it is comfortable with and to act accordingly, both in terms of pricing across policies, and even as to whether it wants to participate in the Access Program.

The laws which govern individual standard health benefits plans are outside the purview of the EHSC. The EHSC recognized this when it elected to subsidize the purchase of such policies for individuals. Other alternatives may exist for providing a subsidized insurance program, but there are sound public policy reasons underlying the EHSC's decision in designing the Access Program as it has—that is, to subsidize the purchase of individual standard health benefits plans embracing all of the protections and potential encumbrances inherent in the laws governing these health benefits plans. The commenter has not presented an argument that yet persuades the EHSC that the decision is inappropriate.

COMMENT: Two commenters stated that participating carriers should not be required to credit the Access Program for the "premium collected from the Access Program which resulted in a loss ratio exceeding 75 percent but which is less than 85 percent" pursuant to N.J.A.C. 8:91-5.4(e)3. The commenters stated that this appears to be an additional penalty for carrier efficiency, which is more restrictive than the 75 percent standard established under N.J.S.A. 17B:27A-9. The commenters questioned the EHSC's rationale for the additional 10 percent loss ratio requirement.

RESPONSE: The EHSC disagrees with the commenter's analysis of the situation. Carriers are not being "penalized" for being more efficient. It is erroneous to assume that a loss ratio less than 85 percent even necessarily always results wholly or partly due to carrier efficiency; other factors may be involved.

The EHSC believes, and has an actuarial study which indicates, that the pool of potential Access Program enrollees presents a better than average claim risk for carriers. The EHSC currently believes that these risk differentials cannot be recognized through a differential in pricing of the policies, since the policies must be community rated. However, the EHSC expects these differentials to be recognized in the loss ratio requirements as a condition of participation. Inasmuch as the EHSC is expending State funds, the EHSC believes it is only prudent for the Access Program to obtain the greatest value for a dollar that it can get.

The EHSC does recognize that a carrier should receive some of the benefit of the better risk, and its own efficiencies; therefore, the Access Program's loss ratio credit formula is designed to share the "excess" premium with the carriers. Clearly, the EHSC expects the bulk of the excess collected to be returned to the Access Program, where it will be used to subsidize additional eligible lives. (The EHSC notes that carriers that participate receive other financial and less tangible incentives, including, but not limited to, increased market share with lives that can be counted toward exemption quotas with respect to loss assessments under the IHC Program.)

Finally, it must be kept in mind that, just as with individual enrollment, carrier participation is voluntary. While the EHSC sincerely hopes that many carriers will participate in the Access Program, no carrier is compelled to do so. Thus, carriers should closely examine whether they can live with the requirements specified at N.J.A.C. 8:91 before pursuing the matter any further.

COMMENT: One commenter was critical of N.J.A.C. 8:91-5.4(n), requiring carriers to provide enrollees a 12-month premium guarantee. The commenter stated that for some carriers, rate guarantees have systemic implications, if they do not normally change policyholder rates upon anniversary dates, but upon universal dates instead. The system difficulties could affect the carrier's ability to enter the Access market.

RESPONSE: The EHSC recognizes that not all carriers provide 12-month premium guarantees. The EHSC also recognizes that meeting this requirement may force a carrier to undergo significant (and perhaps costly) system changes. Nevertheless, a 12-month premium guarantee is a requirement for participation. The EHSC believes that this guarantee is necessary for the integrity of the Access Program. A carrier will have to evaluate whether it wants to incur the difficulties and costs necessary to meet this participation requirement.

The EHSC does not anticipate that all carriers that ultimately participate in the Access Program will do so all at the same time. In fact, the EHSC hopes that the number of carriers that participate will increase over time, as the Access Program's funds increase and more applicants are able to enroll. So, even though a carrier may not be able to enter the Access Program upon start-up, the EHSC hopes that this will not deter carriers from participating totally. The EHSC expects opportunities to exist for carriers under the Access Program as long as the Access Program is operational. Additionally, the EHSC encourages carriers that are interested in participating, but foresee some systems difficulties causing delay in their entry, to still apply and be active in the carrier contract negotiations.

COMMENT: One commenter stated that it is unclear how rate renewals for existing Access Program enrollees will be handled—whether the carrier will notify the customer of any change in rates, or if that notice will be the responsibility of the Access Program.

RESPONSE: A carrier may want to give notice to all its insureds of premium changes, especially if Access Program enrollees are not systemically distinguishable from other insureds. The Access Program will provide a notice to the affected enrollees which will state that the premium for the specific policy has changed, and which, in addition, will delineate the new subsidy and contribution distribution between the enrollee and the Access Program assuming the enrollee does not change health benefits plans and/or carriers. For the purposes of the Access Program enrollee, notice delineating the revised contribution is probably more relevant than notice of the change in premium. However, carriers should not presume that they are barred from having any contact with enrollees in this regard. Furthermore, it is not the intent of the EHSC to abrogate any statutory duties which may exist for carriers regarding such notice.

COMMENT: One commenter noted that at N.J.A.C. 8:91-4.5(b) the rules state that the Access Program may disenroll an enrollee for a variety of reasons, but that the effective date of the disenrollment must be at least 10 days from the date of the notice, when, in fact, the individual was no longer eligible at an earlier date. The commenter questioned why, in a case of fraud and abuse, the EHSC would want to give any advance notice and terminate with a future effective date.

RESPONSE: At this time, the EHSC believes that, as a matter of due process, it has an obligation to provide prior notice of disenrollment, regardless of the reason for the disenrollment. Disenrollment from the

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Access Program is not the only penalty for commission of fraud or abuse of the system, and the EHSC does intend to pursue other measures as well.

COMMENT: One commenter questioned whether it is reasonable to assume that disenrollment from the Access Program is separate from any disenrollment proceedings a carrier may initiate (for instance, if an HMO were to terminate an individual for continually violating rules and procedures). That is, could a person be disenrolled from a participating carrier's plan but still be eligible for the Program with another carrier?

RESPONSE: Yes, it's possible. Of course, the EHSC will look closely at the reason(s) that a person was disenrolled by a carrier. Among other things, eligible enrollees must abide by the requirements of the standard health benefits plan purchased. (See N.J.A.C. 8:91-6.3(d).)

COMMENT: One commenter noted that N.J.A.C. 8:91-2.11 discusses the right of an individual to enroll in a new plan after being disenrolled by a particular carrier. The commenter stated that it appears that an individual could enroll, fail to pay the Access Program, be disenrolled and then join another carrier in an endless cycle. The commenter suggested that this situation should not be allowed to become endless.

RESPONSE: The situation cannot occur exactly as stated by the commenter, though the EHSC has not limited the number of times that a person may reapply to enroll. An individual could apply for the Access Program, be enrolled, select a carrier, eventually fail to submit appropriate contributions, and then be disenrolled by the Access Program. (The Access Program enrollee should never be disenrolled by a carrier for nonpayment of contribution; contributions are paid to the Access Program, the Access Program matches the contributions with subsidy dollars, and remits the premium to the carrier.) The indivdiual may subsequently reapply, be re-enrolled, and select either the same or a different carrier. In any instance, the risk of nonpayment is upon the Access Program, not the carrier. Future experience may cause the EHSC to reevaluate this scenario.

COMMENT: Two commenters stated that, contrary to N.J.A.C. 8:91-5.7, carriers must have the right to terminate all policyholders in the Access Program if New Jersey eliminates the subsidized program.

RESPONSE: It is unclear why the commenters take this position. In any case, the EHSC disagrees. Access Program enrollees are to be treated just as any other insured. The statutes governing the IHC Program do not provide as a reason for nonrenewal or cancellation failure to continue to be subsidized or to have a certain level of income. If, upon termination of the Access Program, former Access Program enrollees fail to pay the full amount of the required premium (or one of the other reasons for termination are determined to exist pursuant to N.J.S.A. 17B:27A-6b, or the carrier withdraws from the individual market entirely), then a carrier may cancel. Otherwise, a carrier does not have a statutory right to terminate any insured's standard health benefits plan.

COMMENT: One commenter questioned whether a carrier may investigate non-income issues regarding a person's eligibility for coverage under a standard health benefits plan (for instance, eligibility for Medicare, residency) or must the carrier request that the Access Program pursue such an investigation.

RESPONSE: The Access Program will have already requested this information prior to approving any individual's application for enrollment in the Access Program; a separate carrier request should be unnecessary in most instances. Additionally, the Access Program will perform random audits with the intent of discovering fraud and abuse. If a carrier believes that an Access Program enrollee has supplied false information, or that the enrollee's status has changed, whether it is income or non-income related, the EHSC prefers that the carrier bring the situation to the attention of the Access Program for investigation.

COMMENT: One commenter questioned the review procedures set forth at N.J.A.C. 8:91-5.6 (review of applications to be a participating carrier). The commenter queried whether it is appropriate to infer that the EHSC will notify a carrier of any deficiencies in its application within 30 days of receipt of the carrier's application, and whether a carrier reasonably could assume that, if no such notice is received by the carrier within 30 days of receipt of the application by the EHSC, the application is approved.

RESPONSE: The agency will notify the carrier of any deficiency, but there is no deemer implied with respect to notice of deficiency or approval of application. Carrier participation is subject to a prior, affirmative approval. Clearly, it is in the interest of both the carrier and the EHSC for the review and approval process to be performed expediently, as well as thoroughly, but the EHSC does not believe with a program of this kind that it would be appropriate to perform view and approval with a deemer provision.

COMMENT: One commenter questioned how a carrier would demonstrate that it is or had considered contracting with a federally-qualified health center (this in reference to N.J.A.C. 8:91-5.4(h), which states that carriers are encouraged to build networks in under-served areas, including consideration of contracting with federally-qualified health centers). The commenter asked if it was enough for the carrier to simply say what it did or to certify that it was or had been considering contracting with health care providers in under-served areas. The commenter stated taht the responsibilities of carriers in this regard should be clarified.

RESPONSE: The application to participate and any follow-up questions to the application, as well as the periodic review process (which will require answering standard and carrier-specific questions) should glean this information. Some supporting documentation may be requested. (The EHSC is considering using a formal application and periodic review form, as well as a loss ratio reporting form to simplify the process for both carriers and the Access Program. If so, these may be added to the Access Program rules with incorporation by reference to an appendix.) The EHSC will be more inclined to use certifications rather than records of correspondence between the carriers and the health care providers, since some of that information may be proprietary.

COMMENT: Two commenters stated that there should be a waiver of the premium tax due under health policies, and that the State subsidy should not be used to pay a State premium tax.

RESPONSE: The EHSC does not have the regulatory authority to establish a waiver of State premium taxes for either the Access Program (at least under the current design) or for health benefits plans generally. Such a waiver probably would require a legislative change.

COMMENT: One commenter noted that when an enrollee is determined eligible, their name will be submitted to the carrier (N.J.A.C. 8:91-4.3(g)), and questioned whether the carrier would receive a copy of the applicant's enrollment form.

RESPONSE: The carrier probably will not receive a copy of the enrollee's enrollment form with the Access Program. However, the carrier should receive a copy (actually the original, the Access Program would keep the copy) of the insurance application form submitted by the enrollee. The carrier should receive the insurance application form either at the time, or prior to the date, that the carrier receives the enrollee's name with the appropriate premium remittance. The EHSC assumes that this is the information that the commenter believes that the carrier should be receiving. (The Access Program enrollment form will contain similar, but not exactly the same, information to that required in the insurance application form.)

COMMENT: One commenter requested that, with respect to penalties or sanctions which may be imposed upon carriers by the EHSC for "failure to meet contracted objectives" (N.J.A.C. 8:91-2.5(b)), the EHSC impose a standard of reasonableness to the periodic reviews.

RESPONSE: The EHSC intends that the specific penalties and sanctions will be set forth in the participating carrier contract, so carriers will have some input into the determination of what is reasonable.

Summary of Agency-Initiated Changes:

At N.J.A.C. 8:91-2.4(a)7, language which was missing in the proposal has been inserted upon adopted after "N.J.A.C. 11:20-11," and "Conservation, Rehabilitation, Liquidation" has been deleted and replaced as follows: "or placed into conservation, rehabilitation or liquidation pursuant to N.J.S.A. 17B:32-1 et seq., or such similar law in the carrier's state of domicile".

At N.J.A.C. 8:91-3.2, a definition of "applicant" has been added to clarify who an applicant is. That is, the definition of applicant is intended to clarify that an applicant may be all or fewer than all members of an entire family.

At N.J.A.C. 8:91-3.3(a)1, certain language regarding family gross income was misplaced and has been relocated. Additional grammatical changes have been made.

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

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CHAPTER 91
HEALTH ACCESS NEW JERSEY

SUBCHAPTER 1. GENERAL PROVISIONS

8:91-1.1 Contents of chapter; application

(a) This subchapter sets forth the general provisions of this chapter, including definitions of words and terms used throughout this chapter.

(b) This subchapter applies to all enrollees and participants and other parties interested in, or affected by, the Health Access New Jersey program.

8:91-1.2 Definitions

Words and terms used in this chapter and subchapter shall have the meanings as set forth below, unless specifically defined otherwise in another subchapter of this chapter, or the context clearly indicates otherwise.

"Access Program" means the Health Access New Jersey Program.

"Board" means the Individual Health Coverage Program Board of Directors established pursuant to N.J.S.A. 17B:27A-10.

"Carrier" means an insurance company, a health service corporation or health maintenance organization admitted to transact the business of insurance in New Jersey, authorized to do the business of health insurance or provide coverage of health services, and which is issuing standard health benefits plans in accordance with the Individual Health Coverage Program, pursuant to N.J.S.A. 17B:27A-2 et seq.

"Commission" means the Essential Health Services Commission established pursuant to N.J.S.A. 26:2H-18.54.

"Contribution" means the amount of money which Access Program enrollees must submit to the Access Program towards the cost of purchasing health coverage.

"Credit or dividend" means the sum total of amounts returned to the Access Program and amounts retained by the participating carrier, pursuant to a formula established by the Commission, which are necessary to assure minimum loss ratio standards are met.

"Enrollee" means a person who has been determined by the Access Program as eligible to receive a subsidy towards the purchase of health coverage, and who has agreed to abide by the rules of the Access Program in obtaining and maintaining such health coverage.

"Health Access New Jersey" means the subsidized insurance program of the Essential Health Services Commission authorized pursuant to N.J.S.A. 26:2H-18.65.

"Health care provider" means a person or facility providing health care within the scope of their licensure and includes Federally Qualified Health Centers, approved provider-sites participating in the New Jersey Primary Care Physician and Loan Redemption Program and Community and School-based Clinics.

"Participant" or "participate" means that a carrier has entered into a contract with the Commission to provide benefits or covered services to Access Program enrollees subject to the rules of the Access Program.

"Premium" means the total amount billed by a participating carrier for the purchase of a standard health benefits plan by an individual, husband and wife, parent and child(ren) or family.

"Standard health benefits plan" means those plans of health coverage promulgated by the Board in accordance with N.J.S.A. 17:27A-7.

"Subsidy" means the amount of money which the Access Program submits towards the cost of purchasing health coverage for an enrollee.

8:91-1.3 General provisions

(a) The Commission shall provide a subsidy for the cost of health coverage for persons who become enrollees of the Access Program.

1. The Access Program subsidy shall not cover the full amount of the cost of the enrollee's health coverage.

2. The amount of subsidy for each enrollee shall be determined by the Commission, based upon a consideration of family income, premiums to be charged by participating carriers, the number of current enrollees, and the current level of funding for the Access Program.

3. Subsidy amounts shall decrease as an enrollee's income increases.

(b) No person shall become an enrollee of the Access Program until a completed application form, including all required documentation, has been submitted to the Access Program, and the person has been determined eligible to be an enrollee in accordance with N.J.A.C. 8:91-3. Submission of a completed application shall be deemed by the Commission as an agreement by the applicant to abide by the rules of the Access Program, if the applicant becomes an enrollee.

(c) The Commission shall provide a subsidy for the purchase of an individual standard health benefits plan promulgated by the Board and offered by a participating carrier.

(d) No carrier shall become a participating carrier of the Access Program until a completed application form has been submitted to the Commission, and the carrier has been determined eligible to be a participant, in accordance with the provisions of this chapter. Submission of a completed application to be a participating carrier shall be deemed by the Commission as an agreement by the applicant to abide by the rules of the Access Program if the applicant becomes a participating carrier.

8:91-1.4 Enforcement and severability

(a) Any person or entity that violates the provisions of this chapter and subchapter shall be subject to all penalties and remedies available under law.

(b) The provisions of this chapter and subchapter shall be enforced by the Commission, and by the Departments of Health, Human Services and Insurance and the Individual Health Coverage Program Board, as appropriate.

(c) If any provisions of this chapter or subchapter are determined to be inapplicable to any person or circumstances, its applicability to other persons or circumstances shall remain unaffected thereby.

SUBCHAPTER 2. ADMINISTRATION OF THE ACCESS PROGRAM

8:91-2.1 Purpose and scope

This subchapter sets forth the general functions and administration of the Access Program as authorized by the Commission, including the coverage which shall be subsidized through the Access Program. The Commission may enter into or authorize contracts as necessary to effectuate the administration of the Access Program.

8:91-2.2 Definitions

Words and terms used in this subchapter shall have the definitions as set forth at N.J.A.C. 8:91-1.2, or as defined below, unless the context clearly indicates otherwise.

"Base Plan" means that benefits plan determined by the Commission to have the lowest premium used to calculate the subsidy and the minimum contribution.

"Minimum contribution" means the lowest amount of contribution an enrollee is expected to pay given the base plan available to the enrollee.

"Minimum contribution scales" are the scales established by the Commission setting forth, on a county by county basis if necessary, the minimum contribution required for each designated income increment, developed in consideration of the designated base plan(s).

"Rating tier" means rating by single, parent and child(ren), husband and wife, and family.

["Rolling premium" means premium of a participating carrier which increases incrementally over the period for which the premium rates are filed.]

8:91-2.3 Benefits packages available to enrollees under the Access Program

(a) The Essential Health Services Commission shall provide a subsidy to enrollees that purchase from a participating carrier stan-

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dard health benefits Plans D, E and HMO, promulgated by the Individual Health Coverage Program Board in accordance with N.J.A.C. 11:20, subject to the following restrictions:

1. The Commission shall subsidize enrollees with income levels at or above 150 percent of the poverty level as defined at N.J.A.C. 8:91-3.3(a) for the purchase of Plan D, Plan E and the HMO Plan of the standard individual health benefits plans established by the Board.

2. The Commission shall subsidize enrollees with income levels below 150 percent of the poverty level for the purchase of Plan E and the HMO Plan.

3. The only cash deductible option which shall be subsidized by the Access Program for Plan D is the $250.00/covered person and $500.00/family deductible.

4. The only cash deductible option which shall be subsidized by the Access Program for Plan E is the $150.00/covered person and $300.00/family deductible.

5. The only copayment option which shall be subsidized by the Access Program for the HMO Plan is the $100.00 hospital inpatient copayment and $10.00 copayment for other services option.

(b) The Commission also shall subsidize the purchase by enrollees of Plans D and E, when offered subject to a network-based arrangement by a participating carrier, if the in-network benefits meet the specifications of (a)3, 4 and 5 above, and the out-of-network benefits meet the specifications established by the Board, but only if the standard health benefits plan meets the criteria of N.J.A.C. 8:91-5.4.

(c) The Essential Health Services Commission shall review the appropriateness of the benefits packages on an annual basis, and shall consider, in its review, whether the benefits packages are meeting the health care needs of the population and the administrative requirements of the program.

8:91-2.4 Functions of participating carriers

(a) Participating carriers' functions with respect to the Access Program shall include, but not be limited to, the following:

1. Provision of benefits or covered services to Access Program enrollees;

2. Collection and submission of data on a periodic basis as required by N.J.A.C. 8:91-5 and other provisions of this chapter;

3. Collection and submission of data from time to time;

4. Serving as the first level of review of enrollee complaints regarding benefits, covered services, claims payments and general contract administration;

5. Maintenance of claims files, complaint and resolution files, and general correspondence records relating to Access Program enrollees;

6. Provision of notice to the Commission of all legal action taken by a carrier against an Access Program enrollee, or action taken by an Access Program enrollee against a participating carrier;

7. Provision of notice to the Commission of any actions taken by a governmental agency, independently or upon the request of the carrier, relevant to the carrier's financial soundness, including, but not limited to, relief requested and relief granted pursuant to N.J.A.C. 11:20-11, *[Conservation, Rehabilitation or Liquidation]* ***or placement of the carrier into conservation, rehabilitation or liquidation pursuant to N.J.S.A. 17B:32-1 et seq., or such similar law in the carrier's state of domicile***;

8. Provision of notice to the Commission of any substantial restructuring of the carrier or of a new financial arrangement, including, but not limited to, acquisition of or by another carrier, merger with another carrier, or movement of large blocks of business into assumption reinsurance contracts, whether as a ceding or assuming carrier;

9. Timely provision of notice to the Commission of an intent to terminate the participation contract as set forth at N.J.A.C. 8:91-*[5.5(f)]***5.7(f)***;

10. Provision of notice *[of]* ***to*** the Commission of changes in the carrier's network, *[such as changes in hospitals and major health care provider groups]* ***semi-annually or whenever the carrier amends its booklet specifying its participating health care providers, whichever is earlier***, if standard health benefits plans are offered under an HMO or other network-based arrangement, *[including, but not limited to, the changes in health care providers, particularly in areas that are medically underserved]* ***except that carriers shall provide notice to the Commission of termination of any hospital's contract with the carrier immediately in accordance with the specifications of N.J.S.A. 26:2J-11.1***;

11. Provision of notice to the Commission of any discrepancies between the Access Program's basis for premium payments and the carrier's basis for premium collection, including for instance, any misunderstanding regarding the number of enrollees covered by a participating carrier; and

12. Submitting periodically to an audit by an independent auditor selected by the Commission, at the cost of the carrier, which may include, but not necessarily be limited to: sales, advertising, claims handling and payment; complaint handling; and procedures and accounting practices related to premium income, commissions, claim payment and expense allocation.

8:91-2.5 Administrative functions of the Commission with respect to the Access Program

(a) The administrative duties of the Access Program, for which the Commission may contract services, shall include, but not be limited to, the following:

1. Enrollment and disenrollment of persons in the Access Program, in accordance with N.J.A.C. 8:91-1.3.

2. Performance of eligibility determinations, which may include assets attestation for continued eligibility of enrollees subsequent to each 12 months of enrollment;

3. Maintenance of enrollment files and waiting lists;

4. Performing determinations of subsidy amounts based upon a subsidy formula approved by the Commission, in accordance with N.J.A.C. 8:91-1.3;

5. Collection of enrollee contributions, and matching of contributions with subsidy dollars and, when applicable, credits or dividends and administrative expense allowances;

6. Informing applicants of the availability of other publicly funded health programs for which they might be eligible;

7. Notifying carriers in a timely manner of an enrollee's disenrollment;

8. Marketing of the Access Program generally, and target marketing to specific eligible categories of persons;

9. Serving as the conduit for distribution of educational materials about the Access Program, and a resource for enrollees to obtain information about participating carriers on a county by county basis;

10. Collection and maintenance of data from participating carriers set forth at N.J.A.C. 8:91-5, or as otherwise specified by the Commission;

11. Preparation of periodic status reports on enrollment, disenrollment and financial status of the Access Program;

12. Preparation of periodic reports based, in whole or in part, upon data collected from the participating carriers;

13. Accounting of the finances of the Access Program using Generally Accepted Accounting Principles;

14. Contracting with the participating carriers, independent auditors, independent actuaries, independent accountants and for other services and supplies as necessary for the proper functioning of the Access Program;

15. Collecting, evaluating and maintaining certain data from participating carriers to monitor the continued well-being and accomplishment of objectives of the Access Program;

16. Monitoring of the Access Program for fraud and abuse by all parties;

17. Establishing of a procedure for handling grievances and appeals by enrollees and carriers, and administration of that process, which shall include maintenance of records of all facets of the grievances and appeals;

18. Preparation of all materials (educational, marketing and objective information) specifically regarding the Access Program to be distributed to the public;

19. Approval of participating carriers on an annual basis, in accordance with the provisions of N.J.A.C. 8:91-5;

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20. Determination of when to discontinue enrolling new applicants in any calendar year based on subsidy funds available and activating a waiting list based upon the factors described by N.J.A.C. 8:91-1.3;

21. Amending provisions of the Access Program as necessary, in accordance with the Administrative Procedure Act;

22. Handling of inquiries about the Access Program;

23. Liaison with the Executive Director(s) of the Individual Health Coverage Program and Small Employer Health Benefits Program Boards of Directors and other State departments and government agencies as appropriate; and

24. Establishment of a subsidy and minimum contribution scale.

(b) The Commission may establish penalties or other sanctions for carriers and contractors who fail to meet contracted objectives.

8:91-2.6 Contributions and premiums

(a) Contributions from enrollees shall be collectible by the Access Program 15 days prior to the beginning of each month during which an enrollee will be covered under a subsidized individual standard health benefits plan, except that the first month's contribution shall be collected at the time that the application is submitted.

(b) The Commission shall submit premiums to participating carriers through the Access Program on a monthly basis, at the beginning of each month.

(c) If it is determined that an enrollee is no longer eligible for the Access Program subsequent to receipt of the billed contribution by the Access Program, coverage shall remain in effect for that enrollee through the end of the month for which the contribution was submitted, with correspondingly appropriate premium remitted by the Access Program to the carrier for that enrollee.

(d) The Access Program shall return any and all contributions submitted by an enrollee more than 30 days following the issuance by the Access Program of a notice of disenrollment to that enrollee.

8:91-2.7 Contribution and subsidy

(a) The minimum contribution an enrollee shall be required to pay to the Access Program shall be based upon a minimum contribution scale.

1. The minimum contributions shall increase as income levels increase.

2. The minimum contribution to income ratios may not necessarily be proportional.

3. Each enrollee shall be required to pay a minimum contribution, as determined by the Commission.

(b) An enrollee's minimum contribution may be recalculated whenever the minimum contribution scale is recalculated, or more frequently if a change in the enrollee's circumstances results in a change in the enrollee's income level relative to the incremental income levels contained in the minimum contribution scale.

(c) The total subsidy the Access Program shall submit on behalf of an enrollee shall be based upon the difference between the enrollee's minimum contribution and the premium of the base plan. The subsidy shall be recalculated at least annually.

1. If not all standard health benefits plans to be subsidized by the Access Program are available Statewide, then the base plan may vary on a county by county basis.

[2. The base plan shall be based upon either the mean of the lowest priced rolling premium plan (wherein the mean premium of the rolling premium plan is determined using a 12 month period of premium beginning the month following the month in which the subsidy is to be determined), or the plan with the lowest fixed premium, whichever is less.]

*[3.]***2.*** The base plan may vary for each rating tier.

(d) An enrollee may elect to purchase a standard health benefits plan with a higher premium than the premium of the base plan, but in doing so, the enrollee shall be responsible for submitting contributions equal to the difference of the premium not covered by the subsidy and the minimum contribution requirement of that enrollee.

(e) An enrollee may change benefits plans, subject to the limitations imposed at N.J.A.C. 8:91-2.3, consistent with the rules promulgated by the Board at N.J.A.C. 11:20.

(f) The Access Program shall provide enrollees with 30 days prior ***written*** notice of any changes in contribution requirements due to premium changes for the plan purchased by the enrollee.

8:91-2.8 Processing of applications and enrollee information

(a) An applicant's application ***to enroll in the Access Program*** shall not be processed unless it is complete and documentation is submitted as required pursuant to N.J.A.C. 8:91-3.

1. If determined incomplete, notice shall be provided to the applicant, with the reasons for the determination of incompleteness specified in writing.

2. An incomplete application shall be retained on record and may be cured within 45 days following the date of notice of incompleteness.

3. If not cured within 45 days, an incomplete application shall be classified as rejected, and the applicant shall be required to submit a new, complete application to be considered for enrollment in the Access Program.

(b) A written determination of eligibility or ineligibility shall be provided to the applicant.

1. A determination of ineligibility shall specify the reasons for ineligibility.

2. A determination of eligibility shall specify the reasons for eligibility and shall be accompanied by at least the following:

i. A notification of the initial subsidy amount (monthly) which the Access Program shall pay on behalf of the enrollee;

ii. A specification of the participating carriers in the county in which the enrollee resides, and instructions for contacting each carrier;

iii. Each of the participating carriers' marketing material;

iv. A Buyers' Guide for Health Access New Jersey;

v. An Enrollee Change of Status Form; and

vi. Instructions for enrollees to follow in providing notice to the Access Program of application ***with a carrier*** for coverage, including requirements regarding payment of contributions and effective dates of coverage.

(c) A determination of eligibility ***for enrollment in the Access Program*** shall remain valid for no more than 15 days pending receipt ***from an enrollee*** of notice of application ***to a carrier*** for coverage *[from an enrollee]*. If 15 days elapse following a notice of eligibility without an enrollee submitting an application ***to a carrier*** for coverage and the required contribution, the enrollee's eligibility for the Access Program shall be terminated, and the enrollee shall be required to submit a new, completed application ***for enrollment in the Access Program*** to be considered *[for the Access Program]* ***again***.

(d) A determination of ineligibility shall remain valid for no more than 60 days, after which the applicant may submit a new, completed application ***for enrollment in the Access Program*** for consideration.

(e) A determination of ineligibility may be appealed to the Access Program within 30 days of receipt of the notice. Submission of an appeal to the Access Program shall specify the reasons for which the appeal should be considered.

8:91-2.9 Notices

All notices shall be deemed properly sent if sent by regular United States Postal Service to the most recent address on record with the Access Program.

8:91-2.10 Administrative expenses

(a) The Commission shall calculate the projected administrative expenses of the Access Program for the ensuing year of the Access Program prior to the beginning of each year, except that in the first year of operation of the Access Program, the projected administrative expenses for that year shall be calculated within a reasonable time period following the date that applicants for enrollment first become enrolled in the Access Program.

(b) The Commission shall segregate and allocate the projected administrative expenses according to whether the expense shall be chargeable as a service to participating carriers, or shall be an expense of the Commission.

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1. Administrative expenses not chargeable to participating carriers shall be an expense of the Commission, unless otherwise specified in contract.

2. Administrative expenses, as contracted between participating carriers and the Commission, for services performed by the Access Program on behalf of the participating carriers, shall include:

i. Expenses related to marketing of the Access Program;

ii. Expenses related to development and dissemination of information about the Access Program not otherwise categorized as marketing;

iii. Expenses related to dissemination of information about participating carriers;

iv. Expenses related to the enrollment and disenrollment process, including processing of applications, determining eligibility, determining subsidy and minimum contribution levels, redeterminations of eligibility and subsidy, notification and processing of terminations and disenrollment;

v. Expenses related to billing, collection, and general fund maintenance;

vi. Expenses related to contracted independent professional services provided to the Access Program, including actuarial, accounting and auditing services; and

vii. Expenses related to audits, specified by the Commission, of the various aspects of the Access Program, except that the expenses of an independent audit of a specific participating carrier shall be the sole responsibility of the specific participating carrier.

(c) The Commission shall charge the projected administrative expense to participating carriers as interim calendar year administrative expenses and may do so on a monthly basis.

(d) The Commission may remit monthly premiums offset by administrative expense receivables from a participating carrier.

(e) Following the close of each fiscal year, the Commission shall determine the actual incurred calendar year administrative expense, segregating and allocating the actual incurred calendar year administrative expense as specified in (b)2 above.

8:91-2.11 Billing of enrollees and declarations of status

(a) The Commission shall bill enrollees on a monthly basis, as follows:

1. Enrollees shall be billed 30 days prior to the due date of the contribution payment; and

2. Contributions shall be due and payable 15 days prior to the first day of each month, except as N.J.A.C. 8:91-2.6 applies.

(b) The Commission shall not remit a premium payment on behalf of an enrollee until the full amount of the enrollee's billed contribution then due and payable is received.

1. The Commission shall notify an enrollee within 10 days following the date any unpaid contribution was due and payable that failure to remit the full amount of the contribution within 30 days following the date the contribution was due and payable shall result in disenrollment of the enrollee from the Access Program. The notice shall contain the following information:

i. A statement that failure to submit the contribution shall result in the Access Program not remitting a premium on behalf of the enrollee to the participating carrier;

ii. A statement of the final date upon which the Access Program will accept a late payment of the full contribution and agree to remit the premium payment to the participating carrier on behalf of an enrollee;

iii. A statement that if the enrollee fails to submit the full contribution within 30 days following the date the contribution was due and payable, the enrollee may remit the full amount of the premium owed directly to the participating carrier during an additional 16 day grace period and maintain the coverage in force, even though no longer an Access Program enrollee;

iv. A statement setting forth the full premium that will be owed by the enrollee to maintain the coverage in force if the enrollee is disenrolled from the Access Program;

v. A statement that if the enrollee is disenrolled from the Access Program for nonpayment of the required contribution, the former enrollee may reapply for the Access Program immediately; and

vi. A statement that the enrollee has the right to appeal the disenrollment decision pursuant to N.J.A.C. 8:91-2.12.

2. The Commission shall, within 20 days following the date that any unpaid contribution was due and payable, provide a second notice to the enrollee setting forth all of the information of (b)1 above.

3. The Commission shall provide notice to an enrollee that disenrollment for nonpayment of contribution is effective, and shall include in the notice the information specified in (b)1iii through vi above.

(c) Monthly billings shall include a requirement that enrollees indicate any change in status pursuant to N.J.A.C. 8:91-3.5(c). Receipt of the monthly contribution shall be deemed an affirmation that status remains unchanged. Failure to report a change in status pursuant to N.J.A.C. 8:91-3.5(c) may result in disenrollment from the Access Program.

(d) The Commission shall, if necessary, request additional explanation and appropriate documentation from an enrollee upon receipt of a declaration of a change in status, as change in status is specified at N.J.A.C. 8:91-3.5(c), to determine whether a redetermination of the enrollee's eligibility or subsidy is required. If a redetermination is necessary, the Commission shall continue to bill enrollees on the appropriate then-current contribution basis, until the redetermination is completed.

(e) The Commission may perform exit surveys of enrollees whether the enrollee is disenrolled involuntarily or initiates disenrollment through an affirmative statement of intent to terminate enrollment in the Access Program.

8:91-2.12 Grievances and appeals

(a) If an applicant or enrollee has a grievance pertaining to the subsidy level calculated, denial of enrollment, or involuntary disenrollment in the Access Program, the applicant or enrollee shall submit a description of the grievance to the Access Program in writing within 10 days of the adverse notification. The Access Program shall notify the applicant or enrollee of its decision on the matter in writing, specifying the reasons for the decision, within 30 days of receipt of the complete documentation of the grievance. The Access Program shall retain all correspondence and documentation relating to the grievance in the applicant's or enrollee's file. The Access Program's decision shall be considered the final agency determination.

(b) Grievances relating to the provision of benefits or services under the standard health benefits plans are appealable to the carrier, the Board or the Commissioner of Insurance, as appropriate.

SUBCHAPTER 3. ELIGIBILITY CRITERIA

8:91-3.1 Purpose and scope

This subchapter establishes the eligibility criteria that all individuals and families shall meet in order to enroll in Health Access New Jersey.

8:91-3.2 Definitions

Words and terms as used in this subchapter shall have the definitions as set forth at N.J.A.C. 8:91-1.2, or as defined below, unless the context clearly indicates otherwise.

"Applicant" means each person for whom coverage to be purchased with subsidy from the Access Program is sought.

"Gross income" means total wages earned before taxes and deductions, and includes tips, royalties, supplemental security income, veteran's administration benefits, unemployment benefits, worker's compensation benefits, income from public assistance programs, child support, spousal maintenance or support payments, dividend and interest income, pensions, social security, net gambling and lottery winnings, and income from other sources.

8:91-3.3 Eligibility criteria for Health Access New Jersey

(a) An applicant shall be eligible for the Access Program if:

1. The *[applicant's family gross income]* ***applicant*** meets the eligibility limits established by the Commission at (a)2 through *[6,]* ***5*** below***,*** and ***the applicant's family gross income meets the income limits established by the Commission,*** which shall not

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exceed 300 percent of the poverty income guidelines revised annually by the United States Department of Health and Human Services, pursuant to the provisions of 42 U.S.C. 9902(2), hereby incorporated by reference. (For further information on the poverty income guidelines, contact the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, D.C. 20201; telephone: 202-690-6141.);

2. The applicant resides in New Jersey, with the intent to remain for the majority of the year;

i. All applicants shall be required to submit a signed affidavit stating their intent to remain in New Jersey for the majority of the year; and

ii. Documentation of residency may be required, if determined necessary by program audit staff.

3. The applicant *[or a family member with a legal dependency obligation is employed and uninsured and]* is not eligible for employer-based insurance*[, or is the uninsured spouse or dependent of someone employed and is not eligible for employer-based insurance, and the employer has not discontinued health insurance coverage for employees or dependents for the class of employee or dependent to which the applicant's family belongs, during the previous 12 months]*;

***i. If the applicant is employed and uninsured, or the uninsured spouse or dependent of someone who is employed, then the employer-based coverage shall not have been discontinued for the class of employee, spouse or dependent to which the applicant belongs in the previous 12 months; and**

ii. Eligibility for benefits pursuant to Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or any amendments thereto, or continued group coverage pursuant to N.J.S.A. 17B:27A-17 et seq., shall not be considered eligibility for employer-based insurance for purposes of determining eligibility for the Access Program;*

4. The applicant is not currently enrolled in any other government program providing health care benefits; ***and***

[5. The applicant is eligible for benefits pursuant to Title X of the Consolidated Omnibus Budget Reconcilation Act of 1985 (COBRA) and any amendments thereto, or continued group coverage pursuant to N.J.S.A. 17B:27A-17 et seq.; and]

*[6.]***5.*** The applicant is not currently covered, and has not been covered in the preceding 12 months, under an individual standard health benefits plan or other individual health coverage (other than limited benefit policies), except as N.J.A.C. 8:91-3.6 applies.

(b) An enrollee's eligiblity shall be redetermined on at least an annual basis, and in each subsequent 12 month period an enrollee shall submit an attestation of assets in addition to submitting to a redetermination of eligibility based on gross income.

8:91-3.4 Determination of income

(a) Gross income for the person to be insured shall include the gross income of all legally responsible adults in a family, unearned income of minor children, and with respect to dependents of persons residing in a household separate from the dependent, that portion of the legally responsible adult's income required to be available for the care and support of that dependent.

1. A family includes legally married spouses and their dependent child(ren), and a single person and his or her dependent child(ren), as child and dependent are defined by the Board in standard health benefits plan policy forms D, E, and HMO in Exhibits D, E and F of the Appendix to N.J.A.C. 11:20.

2. A family shall not include persons residing within the same residence who do not have a legal relationship or legal dependency obligation for support.

(b) Income for purposes of determining eligibility for the Access Program shall be determined as follows:

1. For farm and nonfarm self-employed persons, income shall be calculated using adjusted gross income reported on the family's Federal income tax form(s) from the prior year as the baseline and adding back in reported depreciation, carryover loss, and net operating loss amounts that apply to the business in which the family is currently engaged. Applicants shall report the most recent financial situation of the family if it has changed from the period of time covered by the Federal income tax form. The report may be in the form of a percentage increase or decrease.

2. For wage earners, income shall be calculated based on gross income reported in the four months immediately preceding application for the Access Program, multiplied by three to reflect a 12 month period.

3. For unemployed persons eligible for a governmental income program, income shall be determined by the amount of expected payments from the government agency plus any other gross income.

4. For other individual circumstances, income shall be calculated based on a combination and/or variation of (b)1, 2, and/or 3 above, as appropriate.

8:91-3.5 Proof of income and other eligibility requirements

(a) The applicant shall provide acceptable proof of income that may include any of the following: pay check stub, W-2 form, a letter from an employer on company letterhead stating an individual's income, or a statement of the gross benefit amount from any governmental agency providing benefit to the individual. These should be submitted in the combination appropriate for the individual or family. Applicants shall submit a signed copy of their most recent Federal income tax form filed, if any.

(b) Additional documentation may be requested for verifying eligibility in the Access Program.

(c) Changes that could impact an individual's or family's eligibility for the Access Program shall be reported immediately. As soon as identified, enrollees shall report, at a minimum, changes in the following:

1. Income;
2. Employment status;
3. Family composition (birth, death, marriage, divorce);
4. Address; and
5. Availability of other health coverage.

(d) Failure to provide factual information may result in immediate disenrollment from the Access Program and may result in the imposition of payback provisions available under the law.

8:91-3.6 Eligibility of persons covered under nongroup health benefits plans

Persons who have been covered under an individual standard health benefits plan or other individual health coverage (other than limited benefits policies) ***during the preceding 12 months*** shall be eligible to apply for enrollment in the Access Program annually during the open enrollment period determined by the Commission and shall be considered as eligible, on a first-come first-serve basis, for the Access Program, notwithstanding their coverage under a nongroup health benefits plan, if all other eligibility criteria are met, and a completed application ***for enrollment in the Access Program*** is submitted.

SUBCHAPTER 4. ENROLLMENT

8:91-4.1 Purpose and scope

This subchapter establishes the enrollment process for the Health Access New Jersey subsidized insurance program.

8:91-4.2 Definitions

Words and terms used in this subchapter shall have the definitions as set forth at N.J.A.C. 8:91-1.2, unless the context clearly indicates otherwise.

8:91-4.3 Enrollment process for Health Access New Jersey

(a) Any individual applying for enrollment in the Access Program shall submit a completed application, listing family members to be enrolled, and shall submit such other information and documentation as may be required by this chapter.

1. An applicant shall include an address.

2. An applicant shall include, to the extent possible, a telephone number where the applicant may be contacted during the normal business hours of the Access Program.

(b) Applicants shall submit documentation as required pursuant to N.J.A.C. 8:91-3.

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(c) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in the Access Program. Intentional submission of false information may result in disenrollment of the applicant and all enrolled family members in accordance with N.J.A.C. 8:91-4.5 retroactive to the date of enrollment. The applicant may be subject to payback provisions available under the law.

(d) An individual otherwise eligible for enrollment in the Access Program, as determined on a first-come first-serve basis, may be denied enrollment if the Commission has determined that acceptance of additional enrollment may result in an overexpenditure of subsidy funds. In the event that the Commission closes enrollment, the Access Program shall continue to accept applications for enrollment, and shall screen for, but shall not process, those applications for determination of eligiblity. The Access Program shall place the names of applicants on a waiting list in the order in which complete applications are received, and shall so notify the applicants. When enrollment is reopened, applicants whose names appear on the waiting list shall be notified by the Access Program based on the order in which their applications were received of the opportunity to enroll; provided that the Access Program may require new application forms and documentation from applicants on the waiting list, and may contact applicants to verify continued interest in applying, prior to determining their eligibility.

(e) Except as provided for at (d) above, applications shall be reviewed by the Access Program and those applicants satisfying the eligibility criteria as established by the Commission at N.J.A.C. 8:91-3.3, who have provided all required information and documentation shall be so notified of their eligibility.

(f) Eligible applicants shall be enrolled in the Access Program in the order in which their completed applications for health benefits coverage, including premium contributions, are received.

(g) Following the determination of eligibility for subsidy, the Access Program shall submit the name of the enrollee, the enrollee's choice of standard health benefits plan and an appropriate premium payment to the participating carrier selected by the enrollee in order to make the enrollee's selected health coverage effective, as required by N.J.A.C. 8:91-5.4(k).

8:91-4.4 Redetermination and audit

(a) The Access Program may request information more frequently than annually from an enrollee for the purpose of verifying eligibility if there is good cause to believe that the enrollee's income, residency, family size or other eligibility criteria may have changed since the date on which information was last received by the Access Program. Enrollees shall be given at least 20 days from the date of any such information request to respond to the request. Each enrollee shall be responsible for notifying the Access Program within 30 days of any changes which could affect the enrollee's eligibility or income level.

(b) The Commission may authorize random audits to verify reported income and eligibility and may execute data sharing arrangements with other governmental agencies in order to perform income verification.

(c) Information specific to an enrollee or former enrollee obtained through an audit shall remain confidential, but such information shall be used as necessary for the Access Program and other governmental agencies to carry out the operations of the respective agency, and such information shall be subject to release upon court order. The Access Program and other agencies may use the data gathered to prepare reports for external use so long as the information is not presented in a manner that identifies any specific enrollee or former enrollee.

8:91-4.5 Disenrollment from the Access Program

(a) An enrollee may disenroll effective the first day of any month by giving the Access Program at least 15 days prior written notice of the intention to disenroll. Reenrollment in the plan shall be subject to the provisions of N.J.A.C. 8:91-3. The Commission shall establish procedures for notice by an enrollee of a disenrollment decision, including the date upon which disenrollment shall become effective.

1. Nonpayment of premium contribution by an enrollee shall be considered an indication of the enrollee's intention to disenroll from the plan. The enrollee's Access Program eligibility shall remain effective through the grace period specified at N.J.A.C. 8:91-2.11(b).

2. An enrollee's coverage by a participating carrier shall be subject to the terms of the grace provision contained in the standard health benefits plan contract, and the enrollee shall have the opportunity to maintain coverage under the standard health benefits plan following disenrollment from the Access Program if the enrollee submits the full amount of the premium owed directly to the carrier.

(b) The Access Program may disenroll any enrollee from the Access Program for good cause, which shall include: failure to meet the eligibility requirements set forth in N.J.A.C. 8:91-3.3; loss of eligibility; nonpayment of premium contribution; and fraud or abuse. The Access Program shall provide the enrollee with advance written notice of its intent to disenroll the enrollee specifying the reasons for the disenrollment action. Such notice shall specify an effective date of the notice, and shall describe the procedures for disenrollment, including the enrollee's right to appeal the disenrollment decision pursuant to N.J.A.C. 8:91-2.12.

SUBCHAPTER 5. PARTICIPATION REQUIREMENTS FOR CARRIERS

8:91-5.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the terms under which carriers may participate in the Health Access New Jersey program.

(b) This subchapter sets forth the standards required for a carrier's initial participation and continued participation in the Access Program.

(c) This subchapter sets forth the process of orderly withdrawal of a carrier from participation in the Access Program.

8:91-5.2 Definitions

Words and terms used in this subchapter shall have the definitions set forth at N.J.A.C. 8:91-1.2 and as further defined below, unless the context clearly indicates otherwise.

"Actual claims incurred loss ratio" means the ratio of actual claims incurred under the Access Program divided by the earned premium under the Access Program (before administrative expenses are paid to the Commission).

"Clean claim" means a claim that has no defect (including any lack of required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim.

"Relief" means a waiver from acceptance of applications as required by the Individual Health Coverage Program or a deferment of payment of assessment obligations under the Individual Health Coverage Program as permitted by N.J.S.A. 17B:27A-8 and 17B:27A-12, respectively, which relief must be applied for and approved by the Commissioner of Insurance.

"Selective contracting arrangement" means an arrangement***, approved pursuant to N.J.A.C. 11:4-37,*** for the payment of benefits for covered services by the carrier to preferred providers or preferred provider organizations, which establishes predetermined fee or reimbursement levels.

8:91-5.3 General provisions

(a) Any carrier that submits a completed application in accordance with N.J.A.C. 8:91-5.5 shall be deemed to have agreed to the standards for initial participation set forth at N.J.A.C. 8:91-5.4 and the standards for continued participation set forth at N.J.A.C. 8:91-5.7, if determined by the Commission eligible to be a participating carrier.

(b) Eligibility to participate shall be subject to annual review by the Commission.

(c) The Commission may limit the number of carriers participating in the Access Program, based upon the needs of the Access Program, regarding enrollment and administrative requirements.

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8:91-5.4 Standards for participation

(a) Carriers currently shall offer standard health benefits plans in accordance with N.J.S.A. 17B:27A-2 et seq. and rules promulgated thereunder.

1. No carrier seeking to participate shall have sought relief in the 12 consecutive calendar months preceding the date of its application to participate.

2. A carrier which has obtained relief at any time shall have been offering standard health benefits plans without any relief for no less than 12 consecutive calendar months preceding the date of its application to participate.

(b) A carrier shall offer to Access Program enrollees the same standard health benefits plan(s) D, E and HMO, subject to the limitations imposed at N.J.A.C. 8:91-2.3, that it offers to all eligible persons (as defined at N.J.A.C. 11:20-1.2), who are not Access Program enrollees.

(c) Carriers shall accept all premium payments from the Access Program as payment in full for those standard health benefits plan contracts delivered to Access Program enrollees.

(d) Carriers shall agree to provide coverage to Access Program enrollees until such time as the Access Program provides notice to the carrier of the effective date of the enrollee's disenrollment (subject to any grace provisions contained in the enrollee's standard health benefits plan contract with the carrier) and in accordance with N.J.A.C. 8:91-5.9.

(e) Carriers shall agree to accept payment of the premium net of amounts owed by the carriers to the Access Program with respect to at least the following:

1. The administrative costs of the Access Program chargeable to the carriers as set forth at N.J.A.C. 8:91-5.11;

2. Credits for premium collected from the Access Program, as a result of a loss ratio less than 75 percent as required by N.J.S.A. 17B:27A-9, if any; and

3. Credits for premium collected from the Access Program which resulted in a loss ratio exceeding 75 percent but which is less than 85 percent, pursuant to a formula set forth at N.J.A.C. 8:91-5.10, if any.

(f) Carriers shall provide data to the Access Program from time to time as specified by the Commission, or as otherwise may be specifically requested by the Access Program.

(g) Carriers offering standard health benefits plans not through an HMO and not subject to any selective contracting arrangement shall not discriminate in payment among health care providers, as defined at N.J.A.C. 8:91-1.2.

(h) Carriers offering standard health benefits plans through an HMO or subject to a selective contracting arrangement are encouraged to build networks in under-served areas including consideration of contracting with Federally Qualified Health Centers and/or approved provider sites participating in the New Jersey Primary Care Physician and Dentist Loan Redemption Program and/or Community and School-based Clinics.

(i) Carriers offering standard health benefits plans through an HMO or subject to a selective contracting arrangement shall include as part of the network agreement a prohibition on all balance billing for covered services, exclusive of deductibles, coinsurance and/or copayment requirements by network providers, including hospitals.

(j) Carriers shall agree to accept the date of the enrollee's application for eligibility in the Access Program as the date of application for coverage with the carrier for purposes of determining when a gap in coverage exists as that determination relates to the application of preexisting condition exclusions and the crediting of preexisting condition exclusion provisions previously satisfied. Coverage under Medicaid shall be considered coverage under a health benefits plan.

(k) Carriers shall agree that the effective date of coverage for an enrollee shall be the date specified by the Commission, subject to remittance of the full amount of the appropriate premium by the Access Program to the carrier necessary to effect the coverage on the date specified.

[(l) Carriers shall agree that administrative expenses, dividends or credits payable to the Access Program shall not be considered either as claims paid or as a reduction in premium for purposes of reporting pursuant to N.J.S.A. 17B:27A-9 and 17B:27A-12b, and rules promulgated thereunder.]

*[(m)]**(l)* Carriers shall provide the Access Program with 45 days prior notice of a change in premium rates.

*[(n)]**(m)* Carriers shall provide that the premium for an enrollee shall not be amended for a 12 month period following the date of issue of a policy or contract to that enrollee, so long as there is no material change in the provisions of the policy or contract required under law prior to the date of its renewal, or a change in the number of persons covered under the enrollee's contract causing the enrollee's rating tier category to change.

8:91-5.5 Application to participate

(a) Carriers shall submit a completed application in accordance with N.J.A.C. 8:91-5.4(a) through (n) to participate to the Commission.

(b) The application to participate shall be supported by a copy of the letter from the Board accepting the carrier's certification of use of the Board's standard health benefits plans, or certification of substantial compliance with the Board's standard health benefits plans, as specified at N.J.A.C. 11:20-3.2.

(c) If the carrier is an HMO, or is offering the standard health benefits plans in conjunction with a selective contracting arrangement, the carrier shall specify the geographic areas in which it is authorized to conduct such business, and shall include its list of providers by medical specialty and office zip codes.

(d) The application to participate shall be accompanied by premium rates for the carrier's standard health benefits plans which it offers currently, as are appropriate to the Access Program (that is, Plan D and Plan E with the lowest deductible option, and HMO Plan with the $10.00 copayment option).

(e) The Commission may request such additional information as it determines is necessary to fully consider the application to participate, including marketing material, policy forms, and other filings made by the carrier in accordance with N.J.A.C. 11:20-6, 7, 8 and 9.

(f) An application to participate shall not be considered complete until all required information, including information requested by the Commission pursuant to (e) above, has been received.

8:91-5.6 Review of the application to participate

(a) Within 30 days of receipt of the application to participate, the Commission shall determine if the application is complete.

(b) If the Commission determines that the application to participate is incomplete, the Commission shall notify the applicant in writing, specifying the deficiency(ies) or additional information requested pursuant to N.J.A.C. 8:91-5.5(e) above. The applicant shall be permitted to cure the deficiency or submit the additional information within 30 days of the date of the notice. If the applicant fails to cure the deficiency within 30 days, the Commission shall disapprove the application to participate.

(c) If the Commission determines that an application to participate is complete, and that the carrier meets the standards of N.J.A.C. 8:91-5.4 above, the application to participate shall be approved.

(d) An applicant that has been disapproved to become a participant may, within 30 days of the date of notice of the disapproval, file an appeal.

8:91-5.7 Standards for continued participation

(a) A participating carrier's contract with the Commission shall be reviewed annually, and shall be subject to an annual audit, but shall be renewed by the Access Program unless one or more of the following occur:

1. The Commission determines that the needs of the Access Program in the areas of enrollment and administration require discontinuance of the carrier's participation;

[2. The relationship between the carrier and Access Program results in a conflict of interest or the appearance of an impropriety;]

*[3.]**2.* The carrier has failed to comply with all of the requirements of N.J.A.C. 8:91-5.4;

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*[4.]**3.* The carrier has an annual enrollee complaint ratio exceeding five percent;

*[5.]**4.* The carrier has failed to pay on an annual basis 95 percent of all incurred and reported clean claims within 30 days of submission;

*[6.]**5.* The carrier fails to submit a completed annual participant survey as required by (b) below;

*[7.]**6.* The carrier seeks relief pursuant to N.J.A.C. 11:20-11;

*[8.]**7.* The carrier is placed under an order of conservation, rehabilitation or liquidation pursuant to N.J.S.A. 17B:32-1 et seq.;

*[9.]**8.* The carrier's authority to transact the business of providing health insurance, services or benefits in the State of New Jersey is suspended or revoked by the Commissioner of Insurance;

*[10.]**9.* The carrier cedes more than 10 percent of its business under its standard health benefits plans whether through a reinsurance agreement or assumption agreement; or

*[11.]**10.* The Commission has evidence of fraudulent activity by the carrier against the Access Program.

(b) Within 90 days prior to a participating carrier's anniversary date in the Access Program, the carrier shall submit to the Commission an annual participant survey, which shall include, but not necessarily be limited to: information about handling of claims and complaints, the status of health care provider networks, if any, utilized by the carrier, and the participating carrier's financial condition.

(c) Within 60 days prior to a participating carrier's anniversary date in the Access Program, the Commission shall determine whether the participating carrier's continued participation is appropriate. If the Commission disapproves the carrier's continued participation, the Commission shall so notify the carrier in writing, explaining the reasons for the disapproval. The reasons for the disapproval shall be as set forth in (a) above.

(d) The Commission shall cancel a carrier's contract to participate subject to written notice of no less than 90 days, specifying the reasons for the cancellation of the contract, as set forth in (a) above.

(e) If the Commission disapproves the continued participation of a carrier at any time, the carrier shall have the right to request a hearing from the Commission within 30 days of the date of notice that the carrier's contract will be cancelled or nonrenewed.

1. From the date the carrier's contract is cancelled or nonrenewed until the final determination of the hearing, the carrier shall not accept new enrollees (other than family members of a current enrollee) upon the basis of being a participating carrier through which the enrollee will be able to obtain a subsidized standard health benefits plan.

2. The carrier shall continue to renew Access Program enrollees' standard health benefits plan contracts pursuant to N.J.A.C. 8:91-5.9.

(f) A participating carrier may elect to terminate its contract with the Access Program by providing no less than 180 days notice of its intent to terminate the contract, subject to the following restrictions:

1. Until the date that the carrier's contract will terminate, the carrier shall continue to accept new Access Program enrollees on the basis of the carrier being a participating carrier through which the enrollee will be able to obtain a subsidized standard health benefits plan;

2. Notwithstanding (f)1 above, if a carrier is the only participating carrier in a county, it shall continue to accept new Access Program enrollees as a participating carrier in that county until the Access Program contracts with another carrier in that county; and

3. The carrier shall continue to renew Access Program enrollees' standard health benefits plan contracts pursuant to N.J.A.C. 8:91-5.9.

8:91-5.8 Relief

(a) A carrier shall notify the Commission that it is seeking relief from the Commissioner of Insurance pursuant to N.J.A.C. 11:20-11. Notice of the carrier's decision to seek relief shall be provided concurrent with its notice to the Commissioner of Insurance.

(b) Notice of the carrier's intent to seek relief shall constitute notice by the carrier of its intent to terminate its contract with the Access Program, and the carrier shall comply with N.J.A.C. 8:91-5.7(f), notwithstanding a grant of its relief, in the case of a waiver of obligations, by the Commissioner of Insurance.

8:91-5.9 Renewal of enrollees

(a) Carriers shall renew Access Program enrollee standard health benefits plan contracts upon their anniversary dates, subject to the provisions of N.J.S.A. 17B:27A-6.

(b) If the Access Program indicates that an enrollee is no longer eligible for subsidy, the enrollee's standard health benefits plan contract shall be continued or renewed without the Access Program subsidy at the option of the enrollee.

(c) If a carrier's contract with the Access Program is being terminated, at least 60 days prior to each enrollee's anniversary date, the carrier shall provide notice to the enrollee that the carrier is no longer participating in the Access Program, and that in order for the enrollee to continue to receive subsidization of his or her standard health benefits plan contract, the enrollee will have to obtain coverage from another carrier that is participating in the Access Program. Such notice shall direct the enrollee to contact the Access Program to obtain information about other participating carriers.

(d) If a carrier's contract with the Access Program is being terminated, standard health benefits plan contracts of Access Program enrollees shall remain in force until the enrollee's first anniversary date following the date of termination of the participating carrier's contract, the date of the enrollee terminates coverage, or the enrollee is disenrolled by the Access Program, whichever date is earlier.

1. The carrier shall offer to continue or renew the enrollee's contract without the subsidy at the option of the enrollee.

2. The Access Program shall continue to provide subsidy for the purchase of enrollees' standard health benefits plan contracts with the terminating carrier until the enrollee is disenrolled or until its anniversary date, whichever date is earlier, notwithstanding termination of the carrier's contract.

3. Carriers shall continue to accept payment of premiums from the Access Program net of amounts owed by carriers to the Access Program as set forth in N.J.A.C. 8:91-5.4(d), so long as Access Program enrollees continue to obtain subsidized coverage with a carrier.

8:91-5.10 Loss ratio reports and credit formula

(a) *[Within 60 days following the close of each calendar year]* ***No later than August 15 annually***, each carrier shall submit to the Commission a loss ratio report ***for the preceding calendar year***.

1. Within 30 days following receipt of a participating carriers' report, the Commission shall notify the carrier in writing if the report is incomplete.

2. Within 30 days following the receipt of a notice that the report is incomplete, the carrier shall cure the deficiency.

3. If a carrier fails to cure a deficiency within 30 days, the Commission may treat such a failure as effective notice of the carrier's intent to terminate its contract with the Access Program pursuant to N.J.A.C. 8:91-5.7(f).

4. If a carrier fails to cure a deficiency within 30 days, the Commission shall calculate the missing information based upon information submitted by other participating carriers, and shall interpret such information in a manner most favorable to the Access Program.

(b) No later than 30 days following receipt of a completed loss ratio report from a participating carrier which evidences a loss ratio of less than 85 percent, the Access Program shall submit premium payments to the carrier net of a credit to the Access Program of the amount of premium collected by the carrier which resulted in a loss ratio less than 85 percent, subject to the credit formula set forth at (e) below.

(c) If a carrier ceases to be a participating carrier, and the credit it owes to the Access Program exceeds the amount of premium the Access Program will continue to pay to the carrier until all Access Program enrollees covered by that carrier are disenrolled or obtain coverage with another participating carrier, the carrier shall refund

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the difference to the Access Program no later than the final date of coverage of the last Access Program enrollee covered by the carrier.

(d) Carriers shall specify in the loss ratio report, a dividend or credit against future premiums for policy forms under which Access Program enrollees are covered as is necessary to assure that the aggregate claims incurred in the previous calendar year plus the amount of the dividend or credit equals 85 percent of the aggregate premiums collected for those policy forms in the previous calendar year.

(e) Carriers shall pay to the Access Program a portion of the dividend or credit amount specified in (d) above, as follows:

1. 0.75 (.85—actual claims incurred loss ratio) × premium collected from the Access Program, plus

2. 0.15 (.80—actual claims incurred loss ratio) × premium collected from the Access Program, plus

3. Such amounts as required for the carrier to be in compliance with N.J.S.A. 17B:27A-9 and rules promulgated thereunder;

4. In no event shall the actual claims incurred loss ratio for (e)1 and 2 above be less than 75 percent; and

5. In no event shall the product calculated in (e)1 or 2 above be less than zero.

8:91-5.11 Administrative expenses of the Access Program

(a) Certain administrative expenses of the Access Program, as specified at N.J.A.C. 8:91-*[2.9]****2.10***, shall be charged to participating carriers. Administrative expenses charged to participating carriers shall be paid by the participating carrier within 30 days of the date of the invoice for the charge.

(b) If the determination of the actual incurred calendar year administrative expenses is less than the determination of interim administrative expenses, the excess administrative expenses charged shall be returned to carriers as follows:

1. If the carrier continues to be a participating carrier, the amount of excess administrative expenses charged to the carrier shall be credited to the immediate subsequent years' administrative expense charge allocable to the carrier.

2. If the carrier's participating carrier contract is terminated, the amount of excess administrative expenses charged to the carrier will be credited against the immediate subsequent year's administrative expense charge as long as Access Program enrollees continue to be covered under subsidized contracts with the carrier, with the remainder of the excess administrative expenses, if any, to be refunded in a lump sum to the carrier thereafter.

(c) If the determination of actual incurred calendar year administrative expenses is greater than the determination of interim administrative expenses for that calendar year, an additional administrative expense charge shall be allocated and charged to that calendar year's participating carriers.

SUBCHAPTER 6. PARTICIPATION REQUIREMENTS FOR ENROLLEES

8:91-6.1 Purpose and scope

This subchapter sets forth the requirements for initial and continued participation by persons eligible for the Access Program.

8:91-6.2 Definitions

Words and terms used in this subchapter shall have the definitions as set forth at N.J.A.C. 8:91-1.2, unless the context clearly indicates otherwise.

8:91-6.3 General provisions

(a) Applicants determined eligible for the Access Program shall agree to the conditions set forth in (b) through *[(i)]****(j) below*** as a condition of enrollment in the Access Program. Failure to do so may result in disenrollment from the Access Program, cancellation of coverage by the participating carrier, liability of premiums paid on behalf of the enrollee, and/or full responsibility of the costs of health care services provided to the enrollee.

(b) Eligible enrollees shall submit contributions, as billed, in full to the Access Program by the date specified on the bill received.

(c) Eligible enrollees currently covered under an individual standard health benefits plan or other individual health coverage (excluding limited benefits policies), or currently covered for benefits pursuant to Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and any amendments thereto, or covered through continued group coverage pursuant to N.J.S.A. 17B:27A-17 et seq., shall agree to terminate their current coverage no later than 30 days following the effective date of the enrollee's coverage purchased with subsidies paid on behalf of the enrollee by the Access Program.

*[(c)]****(d)*** Eligible enrollees shall submit to periodic random audits of their family income and assets, except that no enrollee shall be subject to more than two such audits in any calendar year.

*[(d)]****(e)*** Eligible enrollees shall abide by the requirements of the standard health benefit plan form purchased by the enrollee and subsidized by the Access Program.

*[(e)]****(f)*** Eligible enrollees shall notify the Access Program within 30 days of any change in the enrollee's status, as change in status is specified at N.J.A.C. 8:91-3.5(c).

*[(f)]****(g)*** Eligible enrollees shall notify the Access program within 30 days of any change in the enrollees' eligibility for coverage under an employer's group health benefits plan or as soon as reasonably possible following the date the enrollees become aware of the change in eligibility.

*[(g)]****(h)*** Eligible enrollees shall agree that the Access Program has a right of subrogation to any dividend or credit against future premium required by carriers to be issued to assure that the aggregate benefits paid plus the dividend or credit equals at least 75 percent of the premium collected in a calendar year for each policy form pursuant to N.J.S.A. 17B:27A-9, up to the full amount of subsidy paid by the Access Program for the separate enrollees in the calendar year for which the dividend or credit is issued.

*[(h)]****(i)*** Eligible enrollees shall agree that the enrollee's right is subordinate to that of the Access Program with respect to receipt of dividends or credits against future premiums required to be issued by carriers pursuant to N.J.A.C. 8:91-5.11, up to the full amount of subsidy paid by the Access Program for the separate enrollees in the calendar year for which the dividend or credit is issued.

*[(i)]****(j)*** Enrollees who are subsidized for 12 calendar months shall submit to a new eligibility test evaluating income and assets 60 days prior to the end of the 12 calendar month period, if the enrollee continues to claim eligibility for the Access Program.

8:91-6.4 Continued participation

(a) No enrollee shall be subsidized by the Access Program for more than a 12 month period without reconsideration. All such enrollees shall reapply to the Access Program 60 days prior to the end of the 12 calendar month period if the enrollee is to be considered for further Access Program eligibility. Such enrollees shall have priority of eligibility for continued subsidy over new Access program applicants also eligible for subsidy.

(b) No enrollee shall be subsidized by the Access Program for more than 30 days following the date an enrollee becomes eligible for an employment-based group health benefits plan. For purposes of this provision, the date from which an enrollee shall be determined eligible for the group health benefits plan shall be the date that the enrollee's coverage under the group health benefits plan becomes effective.

(c) No enrollee shall be subsidized by the Access Program for more than 30 days following the date an enrollee's health benefits under another government program becomes effective.

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HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Administration
Appeal Procedure
Adopted Amendments: N.J.A.C. 10:48-1

Proposed: March 21, 1994 at 26 N.J.R. 1280(a).
Adopted: August 19, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: August 22, 1994 as R.1994 d.475, **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. 30:4-6 et seq., 30:1-12 et seq., and 30:6D-5(b).

Effective Date: September 19, 1994.
Expiration Date: December 19, 1995.

Summary of Public Comments and Agency Responses:
During the comment period, which closed on April 20, 1994, the Division received one comment from the Eden Family of Services.

COMMENT: We commend the Division for their efforts to expedite the appeals process. In this manner, the Division can more efficiently attend to the needs of the families it serves.

RESPONSE: The Division thanks the Eden Family of Services for its support.

Summary of Agency-Initiated Changes:
Several internal comments were received which noted that the rules refer to the Assistant Director for the region. At the time the amendments were proposed, the Division anticipated that a reorganization was imminent. It now appears that reorganization will be delayed somewhat. The wording throughout the rules has been amended to reflect the original wording, "administrative head of the component." Similarly, proposed N.J.A.C. 10:48-1.1(i) indicates that appeals of specific offer of services shall be initiated within 30 calendar days of the date of the written notification of such action. In addition, at N.J.A.C. 10:48-1.3(a), it is indicated that "appeals of licensure actions, determination of ineligibility for services and appeals of specific offers of placement shall be considered to be contested." N.J.A.C. 10:48-1.1(i) and subsection (a) should contain the same text, since the contested case process is limited only to these three areas. Consequently, the wording at N.J.A.C. 10:48-1.1(i) has been amended to "specific offers of placement."

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 1. APPEAL PROCEDURE

10:48-1.1 General provisions

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

(c) It is expected that, in most disputes between appellants and service components, the appellant will know the identity of the service component with whom there is disagreement. Where the precise service component is not known, such information may be obtained by calling the Administrative Practice Office of DDD (609) 633-2209.

(d) For persons of legal school age, when disputes arise relating to educational program issues, mediation pursuant to N.J.A.C. 6:28-2.6 shall be available through the Office of Education, Department of Human Services. If either party is unwilling to participate in mediation, a written request for a due process hearing under N.J.A.C. 6:28-2.7 may be made directly to the Department of Education. A request for mediation is not prerequisite to a hearing.

(e) (No change.)

(f) An appeal may be settled at any time by a written agreement of both parties. The settlement agreement shall be considered the final decision. The terms of the settlement agreement shall be binding upon the appellant and the Division. The terms of the settlement agreement shall be applicable only to the specific matter under appeal and shall not be released to anyone who is not a party to the settlement.

(g) (No change.)

(h) Contested matters shall be referred to the Office of Administrative Law (OAL) in accordance with N.J.A.C. 1:1. Non-contested matter shall be referred to administrative review.

(i) Appeals of eligibility, licensure action or specific offers of *[services]* ***placement*** shall be initiated within 30 calendar days from the date on the written notification of ineligibility or licensure action.

(j) (No change.)

(k) Except in emergencies, a placement may be deferred pending the exhaustion of the administrative appeal if the appeal is received verbally or in writing 30 calendar days before the proposed placement and the appellant can demonstrate that there may be irreparable harm to the individual as a result of the placement. The Division Director shall decide whether or not to defer the placement. If the Division Director agrees to defer the placement, the Division shall not be responsible to fund the placement except where the Division was funding the placement prior to the request to defer.

(l) If a placement is made on an emergency basis, the appeal may be filed within 30 calendar days following the placement. The individual shall be maintained in the placement to which he or she was placed during the pending of the appeal.

(m)-(n) (No change.)

(o) An initial appeal shall be made in writing to the *[Assistant Director of the region]* ***administrative head of the service component*** in which the dispute exists except for licensure actions. Appeals of licensure actions shall be made to the Division Director.

(p) The *[Assistant Director]* ***administrative head of the component*** shall review the appeal to ensure that it conforms with the definition herein. If the *[Assistant Director]* ***administrative head*** determines that the matter does not conform to the definition of appeal, he or she shall review the matter with the Division's Administrative Practice Officer. If the Administrative Practice Officer agrees that the matter does not conform to the definition of an appeal, the *[Assistant Director]* ***administrative head*** shall set forth the reasons for this conclusion in writing and direct, as applicable, the individual to seek other means of redress.

(q) (No change.)

(r) Evidence as defined in N.J.A.C. 1:1-2 may be submitted in informal conference or administrative reviews. An allegation or conjecture does not constitute evidence.

10:48-1.2 Definitions

The following words and terms, when used in this chapter, shall have the meanings as defined in N.J.A.C. 1:1-2 or this section unless the context clearly indicates otherwise.

. . .

"Appeal" means a request made by an authorized person within the established time frames for a review of a disputed decision of the Division which involves eligibility, placement, provision of service or licensure. The decision shall be a specific action or proposed action which is identifiable in terms of date, "and person(s) making the decision." General complaints or employee grievances shall not be considered appeals.

"Appellant" means the authorized person who may file an appeal with a service component. The authorized person is one of the following:

1.-2. (No change.)

3. The proposed guardian of an individual receiving services where the Division has assessed that the individual is in need of a guardian but a guardian has not yet been appointed;

4.-5. (No change.)

"Chairperson" means the individual appointed by the *[Assistant Director]* ***administrative head of the component*** to hold an informal conference.

. . .

"Informal conference" means a meeting prior to an administrative review in which the respective parties may informally attempt to resolve the issue which is the subject to appeal.

. . .

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"Placement" means the out of home living arrangement, other than for respite, provided by the Division or the day program exclusive of independent employment arranged by the Division.

. . .

"Settlement conference" means an initial step toward resolving a contested matter prior to transmitting the appeal to the OAL as a contested case.

"Non-contested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case. The Director, Division of Developmental Disabilities, may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(a); N.J.A.C. 1:1-2.1).

10:48-*[3.1]***1.3*** Contested cases

(a) Appeals of licensure actions, determination of ineligibility for services and appeals of specific offers of placement shall be considered to be contested.

1. The request shall be in writing and shall contain the information required below. This information shall be the basis of an initial pleading should the matter be transmitted to the Office of Administrative Law. An appeal shall be denied if the required information is not provided. The request shall include:

i. Name and address of appellant;

ii. Name and address of person with developmental disabilities, if the appeal is made by the person's legal guardian;

iii. A brief statement of the matter under appeal;

iv. A list of potential witnesses; and

v. Reference to the law, rule, regulation or policy alleged to be violated.

(b) Appeals of licensure actions shall be forwarded to the Division Director for actions in accordance with N.J.A.C. 10:48-1.4.

(c) If the matter does not meet the conditions of (a) above, and the appellant believes that the matter is contested as defined herein, the appellant shall set forth his or her reasons supporting that the matter should be considered contested in writing.

(d) The appeal shall be made to the *[Assistant Director]* ***administrative head of the component***, who shall review the appeal and decide if it is a contested or non-contested matter.

1. If the matter is determined to be contested, prior to transmittal to the OAL, a settlement conference shall be scheduled by the *[Assistant Director]* ***administrative head of the component***.

2. If the matter is determined to be non-contested, the requirements of N.J.A.C. 10:48-1.5 shall apply.

i. The appellant shall be notified in writing that the matter is non-contested.

ii. If the appellant disagrees, he or she may request a review of that decision by the Division Director.

(e) The appellant shall be notified in writing of a time and date of a settlement conference.

(f) The settlement conference shall require a meeting of the parties, unless both parties agree to a conference by telephone.

1. The settlement conference shall be chaired by a designee of the *[Assistant Director]* ***administrative head of the component***.

2. The purpose of the conference is to negotiate a settlement and all matters discussed shall remain confidential and inadmissible as evidence.

3. Evidence or testimony shall not be presented.

4. No tape recording of the matter shall be made.

5. The appellant may elect to be represented by legal counsel.

6. In addition to the *[Assistant Director's]* ***administrative head of the component's*** designee, a representative of the service component initiating the action under appeal shall be present. The Division may elect to have representation by the Office of the Attorney General.

(g) If agreement is reached, a settlement agreement shall be negotiated and the terms of the agreement shall be made in writing. The settlement shall be time limited or otherwise note when the terms of the agreement shall have been satisfied.

(h) All parties shall sign the agreement. Any settlement is contingent upon the signature of the *[Assistant Director]* ***administrative head of the component***.

(i) The settlement agreement shall conclude the matter.

(j) If no settlement is possible, the *[Assistant Director]* ***administrative head of the component*** shall notify the Division Director in writing that no settlement was made. A copy of that notice shall be sent to the appellant.

10:48-1.4 Office of Administrative Law

(a) Those matters determined to be contested shall be referred to the Office of Administrative Law (OAL) for a hearing, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) If the contested matter is not settled or involves a licensure action, the Division Director shall transmit the matter to the Office of Administrative Law.

1. In the instance of licensure appeals, the matter shall be transmitted within 10 working days of the receipt of the appeal.

2. In the instance of all other contested matters, the matter shall be transmitted within 10 working days of the notice of the *[Assistant Director]* ***administrative head of the component*** that the settlement conference did not resolve the matter.

Recodify existing 1. and 2. as 3. and 4. (No change in text.)

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

10:48-1.5 Non-contested cases

(a) Informal conference requirements are as follows:

1. An informal conference shall be scheduled by the *[Assistant Director]* ***administrative head of the component*** in response to a non-contested matter. The informal conference shall be scheduled no more than 20 working days from the date that a matter is determined to be non-contested. Extension of the conference date beyond 20 working days may only occur upon mutual agreement of both parties.

2. The *[Assistant Director]* ***administrative head of the component*** shall appoint a chairperson to convene the Informal Conference.

3. The chairperson shall prepare a report specifically identifying the issue(s) under appeal, a summary of the position of both parties and a decision with respect to each issue. The reasons for the decision shall be provided. The summary shall be provided to the appellant within 20 working days of the conference. A copy of this summary shall be retained in the individual's file.

4. The appellant may be represented by legal counsel at the informal conference.

5. No transcript shall be made of the informal conference.

6. The Rules of Evidence shall not be strictly enforced.

(b) Should resolution not be possible at the informal conference level, the appellant may submit a written request to the Director, Division of Developmental Disabilities, for an administrative appeal.

1. Written request for an administrative appeal shall be made within 15 working days from the date on the written summary.

2. The Director shall offer an Administrative Review Conference with the parties present or a paper review without the parties appearing. The Division Director shall appoint an Administrative Review Officer.

(c) Administrative paper review requirements are as follows:

1.-2. (No change.)

3. Discovery shall be provided in accordance with the requirements of N.J.A.C. 10:41-2.

4.-7. (No change.)

(d) Administrative review conference requirements are as follows:

1.-2. (No change.)

3. The service component shall be represented by a person designated by the *[Assistant Director]* ***administrative head of the component*** and may produce documentation and such witnesses as have direct knowledge of the issues involved. The person representing the component may not be the same person who chaired the informal conference.

4.-5. (No change.)

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6. Discovery shall be provided in accordance with the requirements of N.J.A.C. 10:41-2.

7. The appellant may request that an employee of the Division testify at the conference. The appellant shall make such a request in writing to the Review Officer at least five working days prior to the conference. The request shall include the name, work location, title (if known) and a summary of the information to be provided by the employee.

Recodify existing 7.-11. as 8.-12. (No change in text.)

10:48-1.6 Emergency relief

Emergency relief shall be available as provided in N.J.A.C. 1:1-2.6.

CORRECTIONS

(a)

THE COMMISSIONER

Adult County Correctional Facilities
Definitions; Strip Searches; Body Cavity Searches

Adopted Amendment: N.J.A.C. 10A:31-1.3
Adopted New Rules: N.J.A.C. 10A:31-8.4 and 8.6
Adopted Recodification with Amendments: N.J.A.C. 10A:31-8.4 and 8.5 as 8.5 and 8.7
Adopted Recodification: N.J.A.C. 10A:31-8.6 through 8.15 as 10A:31-8.8 through 8.17

Proposed: July 18, 1994 at 26 N.J.R. 2841(a).

Adopted: August 19, 1994 by William H. Fauver, Commissioner, Department of Corrections.

Filed: August 26, 1994 as R.1994 d.484, **without change**.

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 2A:161A-1.

Effective Date: September 19, 1994.

Expiration Date: March 5, 1995.

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

Full text of the adoption follows:

10A:31-1.3 Definitions

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

. . .

"Body cavity search" means the visual inspection or manual search of a person's anal or vaginal cavity.

. . .

"Contraband" means:

1. Any item, article or material found in the possession of or under the control of an inmate which is not authorized for retention or receipt; and/or

2. Any article which may be harmful or presents a threat to the security and orderly operation of an adult county correctional facility. Items of contraband shall include, but shall not be limited to:

i. Guns and firearms of any type;

ii. Ammunition;

iii. Explosives;

iv. Knives, tools and other implements not provided in accordance with adult county correctional facility regulations;

v. Hazardous or poisonous chemicals and gases;

vi. Unauthorized drugs and medications;

vii. Medicines dispensed or approved by the adult county correctional facility but not consumed or utilized in the manner prescribed;

viii. Intoxicants, including, but not limited to, liquor or alcoholic beverages; and

ix. Where prohibited, currency and stamps.

. . .

"Strip search" means the removal or rearrangement of clothing and the visual inspection of the person's undergarments, buttocks, anus, genitals, or breasts.

. . .

10A:31-8.4 Strip search of a person(s) who has been detained or arrested for commission of an offense other than a crime

(a) A person who has been detained or arrested for commission of an offense other than a crime and who is confined in an adult county correctional facility shall not be subject to a strip search unless there is reasonable suspicion that a weapon, controlled dangerous substance or contraband will be found.

(b) Strip searches shall be conducted:

1. By a person of the same sex;

2. In private;

3. Under sanitary conditions; and

4. In a professional and dignified manner.

(c) The person authorized to conduct a strip search shall file a written report to be made part of the detained or arrested person's record which shall include, but not be limtied to, the following information:

1. A statement of facts indicating reasonable suspicion for the search;

2. The name of the officer in charge who authorized the search;

3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;

4. The name(s) of the person(s) conducting the search; and

5. An inventory of the item(s) found during the search.

(d) Reports required pursuant to this section shall not be deemed public records, but, upon request, shall be made available to:

1. The Commissioner, New Jersey Department of Corrections;

2. The adult county correctional facility Administrator;

3. The Attorney General;

4. The county prosecutor; and/or

5. The person searched.

10A:31-8.5 Strip searches of a person(s) lawfully confined in an adult county correctional facility

(a) The person authorized to conduct a strip search on a person lawfully confined in an adult county correctional facility shall obtain the permission of the supervisor on duty to conduct the search and shall file a written report explaining the reasons for the search.

(b) Strip searches may be conducted in any of the following circumstances:

1. Prior to admitting a person lawfully confined to an adult county correctional facility, prison or jail by court order or pursuant to an arrest authorized by law;

2.-5. (No change.)

Recodify existing 7.-8. as 6.-7. (No change in text.)

(c) A strip search shall include a check for:

1.-5. (No change.)

(d) A strip search shall be conducted in private at a location where the search cannot be observed by persons not conducting the search and no member of the opposite sex shall be present during the search, except as set forth in (e) below.

(e) Strip searches may be conducted by persons of the opposite sex under emergent conditions as ordered by the adult county correctional facility Administrator.

(f) No inmate shall be searched as punishment or discipline.

10A:31-8.6 Body cavity searches of a person(s) who has been detained or arrested for commission of an offense other than a crime

(a) The person who has been detained or arrested for the commission of an offense other than a crime and who is lawfully confined in an adult county correctional facility shall not be subject to a body cavity search unless the officer in charge determines that the search is based on a reasonable suspicion that a weapon, controlled dangerous substance or contraband will be found.

(b) An authorized body cavity search of a person who has been detained or arrested for commission of an offense other than a crime shall be conducted:

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i. Under sanitary conditions;
ii. At a location where the search cannot be observed by unauthorized persons;
iii. By a physician or a registered nurse who must be of the same sex as the detained or arrested person;
iv. In the presence of only those correction officers deemed necessary for security, who are of the same sex as the detained or arrested person; and
v. In a professional and dignified manner, with maximum courtesy and respect for the person.
(c) The person who has been detained or arrested for the commission of an offense other than a crime may:
i. Remove the object in the presence of the physician or registered nurse and a correction officer(s) of the same sex as the person; or
ii. Be examined by the physician or registered nurse who may remove the object, without the use of force.
(d) In the event it is determined that a foreign object which contains metal is present in the body cavity of the person who has been detained or arrested for the commission of an offense other than a crime, such object may be removed only by the physician with or without the use of force.
(e) In the event the officer in charge or the physician or the registered nurse has determined that nonmetal contraband is being concealed in the body cavity of the person who has been detained or arrested for the commission of an offense other than a crime, and that person refuses to permit contraband removal, the person may be placed in medical isolation. During medical isolation, that person may be kept under visual surveillance to detect removal or elimination of the contraband.
(f) The person authorized to conduct a body cavity search shall file a written report to be made part of the detained or arrested person's record which shall include, but not be limited to, the following information:
1. A statement of facts indicating reasonable suspicion for the search;
2. The name of the officer in charge who authorized the search;
3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;
4. The name(s) of the person(s) conducting the search;
5. An inventory of any item(s) found during the search; and
6. The reason for use of force, if necessary.
(g) Reports required pursuant to this section shall not be deemed public records, but, upon request, shall be made available to:
1. The Commissioner, New Jersey Department of Corrections;
2. The correctional facility Administrator;
3. The Attorney General;
4. The county prosecutor; and/or
5. The person searched.

10A:31-8.7 Body cavity searches of an inmate(s) lawfully confined in an adult county correctional facility

(a) Under no circumstances may a body cavity search be conducted on an inmate lawfully confined in an adult county correctional facility unless the correction officer in charge is satisfied that a reasonable suspicion exists that contraband will be found in the inmate's body cavity.
(b) In the event an officer in charge is reasonably satisfied that contraband is being concealed in the inmate's body cavity, the inmate shall be escorted immediately to the adult county correctional facility's hospital or medical department, and the following procedure shall be followed for examination of the inmate and removal of contraband.
1. A body cavity search shall be conducted:
i. Under sanitary conditions;
ii. At a location where the search cannot be observed by unauthorized persons;
iii. By a physician or registered nurse of either sex;
iv. In the presence of only those correction officers deemed necessary for security, who are of the same sex as the inmate; and
v. Conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person.
2. The inmate may:
i. Remove the object in the presence of the physician or registered nurse and a correction officer(s) of the same sex as the inmate; or
ii. Be examined by the physician or registered nurse who may remove the object without the use of force.
3. If a correction officer in charge determines there is reasonable suspicion to believe that a foreign object which contains metal is present in the inmate's body cavity, such object may be removed only by the physician with or without the use of force.
4. In the event the officer in charge or the physician or the registered nurse has determined that nonmetal contraband is being concealed in the inmate's body cavity, and the inmate refuses to permit contraband removal, the inmate shall receive appropriate disciplinary charges and may be placed in prehearing detention or medical isolation. During prehearing detention, medical isolation and disciplinary detention, if any, the inmate may be kept under visual surveillance to detect removal or elimination of the contraband.
(c) A written report of the results of a body cavity search shall be made part of the inmate's record and shall include, but not be limited to, the following information:
1. A statement of facts indicating reasonable suspicion for the search;
2. The name of the officer in charge who authorized the search;
3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;
4. The name(s) of the person(s) conducting the search;
5. An inventory of any item(s) found during the search; and
6. The reason for use of force, if necessary.

Recodify existing 10A:31-8.6 through 8.15 as 10A:31-8.8 through 8.17 (No change in text.)

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Medical Malpractice Reporting Requirements

Adopted New Rules: N.J.A.C. 11:1-7

Proposed: April 4, 1994 at 26 N.J.R. 1433(a).
Adopted: August 26, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.
Filed: August 29, 1994 as R.1994 d.493, **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. 17:8-8.1, 17:1C-6(e), 17:30D-1 et seq.
Effective Date: September 19, 1994.
Expiration Date: January 31, 1996.

Summary of Public Comments and Agency Responses:
The Department received a total of three comments on the proposed new rules from the American Insurance Association, North Jersey Colon and Rectal Surgical Associates, P.A. and Overlook Hospital.
COMMENT: One of the commenters contends that no statutory authority exists for proposed N.J.A.C. 11:1-7.3(c)4, which requires an insurer or insurance association to provide the Medical Practitioner Review Panel with relevant facts supporting the termination or denial of medical malpractice liability coverage to a practitioner or surcharge assessed against a practitioner. According to the commenter, the authorizing statute (N.J.S.A. 7:30D-17) merely requires insurers to make their records of termination, denial or surcharge available to the Panel upon the Panel's request, and does not support the automatic submittal of relevant facts with each and every report to the Panel. It is the commenter's position that such a requirement permits the Department to substitute its judgment for the Panel's that "relevant facts" are necessary for all reports.
RESPONSE: The Department disagrees with the commenter that the Department has usurped the Panel's authority. N.J.S.A. 17:30D-17c provides the Department, in consultation with the Panel, with the authority to determine the contents of the notice. Nevertheless, rather than requiring inclusion of all relevant facts in the initial notice, the

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Department and the Panel have agreed to amend proposed N.J.A.C. 11:1-7.3 to enable the Panel to request additional relevant factual information subsequent to receipt of the initial notice.

COMMENT: One commenter stated that the proposed requirement to report all malpractice settlements to the Board may discourage practitioners from settling even minor claims. According to the commenter, many practitioners may prefer to incur litigation costs than to "blemish their records."

RESPONSE: The proposed rules implement the statutory requirement that all judgments, arbitration awards and medical malpractice claim settlements involving a licensed practitioner are to be reported to the Panel. Accordingly, no purpose would be served for a practitioner to litigate, rather than settle, a malpractice claim.

COMMENT: One commenter stated that the enabling statute and the proposed rules unreasonably differentiate between the information required to be provided by carriers and practitioners. The commenter stated that practitioners who either are self-insured or obtained coverage from out-of-State carriers are relieved of the responsibility to provide notice of any termination or denial of medical malpractice liability coverage or of any surcharges assessed by a carrier. It is the commenter's position that all parties should be required to supply the same information to the Panel. The commenter additionally stated that the penalties imposed by the proposed rules should be the same for both practitioners and carriers.

RESPONSE: The Department has no statutory authority to compel out-of-State carriers to comply with the proposed rules' notice requirements. Moreover, it would be impossible for self-insured practitioners to provide termination, denial or surcharge information. Regarding penalties, the Department inadvertently omitted practitioners from proposed N.J.A.C. 11:1-7.4(a), and is amending that proposed provision accordingly to conform with the statutory mandate and other provisions of these rules.

Summary of Agency-Initiated Changes:

1. At proposed N.J.A.C. 11:1-7.3(a)1, "the insurer" has been changed to "an insurer."
2. At proposed N.J.A.C. 11:1-7.3(b), the word "or" has been added and the word "who" deleted.
3. At proposed N.J.A.C. 11:1-7.3(c), the word "initial" has been inserted, referring to the written notice required to be submitted to the Panel. The words "or malpractice report form of the National Practitioner Data Bank" have also been added, which permits the required notice information to be submitted to the Panel on such form or in letter form.
4. At proposed N.J.A.C. 11:1-7.3, subsection (e) has been added in response to a comment received on the proposed rules, which enables the Panel to request supplemental factual information following receipt of the initial notice.
5. A confidentiality provision has been added at N.J.A.C. 11:1-7.4 to clarify the circumstances and conditions under which information submitted pursuant to this subchapter shall be confidential.
6. At N.J.A.C. 11:1-7.5(a), a comma has been added and the word "or" deleted as a matter of form. Also, the words "or practitioner" have been added which were inadvertently omitted on proposal.
7. At N.J.A.C. 11:1-7.5(b), the word "subsection" has been corrected as "subchapter."

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 7. MEDICAL MALPRACTICE REPORTING REQUIREMENTS

11:1-7.1 Purpose and scope

(a) The purpose of these rules is to implement N.J.S.A. 17:30D-17(a) and (b). These statutory provisions require insurers, insurance associations and licensed medical practitioners to notify the Medical Practitioner Review Panel of any medical malpractice claim settlements, judgments or arbitration awards involving a licensed practitioner, any termination or denial of malpractice insurance coverage to a practitioner, or any surcharge assessed against a practitioner. These proposed rules establish the form and content of the notice required under these statutory provisions.

(b) These rules apply to all insurers or insurance associations authorized to issue medical malpractice liability insurance in New Jersey, and to all practitioners licensed by the State Board of Medical Examiners.

11:1-7.2 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Medical malpractice liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional services by any licensed medical practitioner or health care facility or a claim arising out of ownership, operation or maintenance of the practitioner's or facility's business premises, including primary and excess coverages.

"Medical Practitioner Review Panel" or "Panel" means the panel established pursuant to N.J.S.A. 45:9-19.8.

"Practitioner" means any person licensed to practice medicine and surgery under N.J.S.A. 45:9-1 et seq., podiatry under N.J.S.A. 45:5-1 et seq., or a medical resident or intern.

"State Board of Medical Examiners" means the board established pursuant to N.J.S.A. 45:9-1.

11:1-7.3 Medical malpractice reporting requirements

(a) Any insurer or insurance association authorized to issue medical malpractice liability insurance in the State shall notify the Medical Practitioner Review Panel in writing of the following:

1. Any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by *[the]* ***an*** insurer or insurance association;
2. Any termination or denial of medical malpractice liability coverage to a practitioner; and
3. Any surcharge assessed against a practitioner because of the practitioner's practice method or medical malpractice claims history.

(b) Any practitioner licensed by the State Board of Medical Examiners who is not covered by a policy of medical malpractice liability insurance issued in this State, *[who]* ***or*** has coverage through a self-insured health care facility or health maintenance organization, or has medical malpractice liability insurance which has been issued by an insurer or insurance association from outside the State, shall notify the Panel in writing of any medical malpractice claim settlement, judgment or arbitration award to which the practitioner is a party.

(c) The ***initial*** written notice referred to in (a) and (b) above may be ***either*** in letter form ***or the malpractice report form of the National Practitioner Data Bank*** and shall contain at least the following information:

1. The name and address of the insurer, insurance association or practitioner submitting the information;
2. The name and address and any other information relating to the identity of the practitioner about whom the information is being submitted; ***and***
3. In the case of a claim settlement, judgment or arbitration award, the name, address and other information relevant to the identity of the claimant making the medical malpractice liability claim against the practitioner, as well as the amount and relevant details of the claim settlement, judgment or arbitration award***.****[; and]*

[4. In the case of termination or denial of medical malpractice liability coverage to a practitioner or surcharge assessed against a practitioner, the relevant facts supporting the termination or denial of coverage or the surcharge.]

(d) The ***initial*** written notice referred to in (a) and (b) above shall be mailed by regular mail or delivered no later than seven days after the settlement, judgment or arbitration award is officially

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agreed to or entered, the notice of termination or denial of coverage is issued to the practitioner, or notice of the surcharge has been issued to the practitioner.

(e) In addition to the information provided in the initial written notice referred to in this section, the Panel may request in writing such supplemental relevant information as it determines to be necessary, which shall be received by the Panel no later than 30 days following the date of the Panel's written request.

***11:1-7.4 Confidentiality**

All information or documentation submitted to the Panel pursuant to this subchapter is confidential, except for release to a government agency under certain circumstances and conditions as set forth at N.J.S.A. 45:9-19.3 and 19.10.*

11:1-*[7.4]****7.5*** Penalties

(a) Any insurer***,*** *[or]* insurance association ***or practitioner*** failing to notify the Medical Malpractice Review Panel pursuant to the requirements of this subchapter shall be subject to such penalties as the Commissioner may determine in accordance with N.J.S.A. 17:30D-12. Additionally, the Commissioner may assess a fine not to exceed $1,000 for the first violation and $2,000 for the second and each subsequent violation, which may be recovered in a summary proceeding pursuant to N.J.S.A. 2A:58-1 et seq.

(b) Any practitioner failing to notify the Medical Practitioner Review Panel pursuant to the requirements of this *[subsection]* ***subchapter*** shall be subject to disciplinary action and civil penalties in accordance with N.J.S.A. 45:1-21, 22 and 25.

(a)

DIVISION OF PROPERTY/LIABILITY

Certificate of Compliance: Mandatory Liability Coverage

Adopted New Rules: N.J.A.C. 11:3-32

Proposed: May 16, 1994 at 26 N.J.R. 1939(a).

Adopted: August 16, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: August 22, 1994 as R.1994 d.477, **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. 17:1C-6(e) and 17:28-1.4.

Effective Date: September 19, 1994.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

Two public comments were received from insurance companies (American International Companies and The Prudential Property and Casualty Insurance Company of New Jersey).

COMMENT: One commenter questioned whether the proposed new rules N.J.A.C. 11:3-32 apply to personal lines and/or commerical lines.

RESPONSE: These rules apply to each insurer authorized to transact automobile or motor vehicle insurance business in this State pursuant to N.J.S.A. 17:28-1.4 regardless of whether it is a personal lines or commercial lines policy.

COMMENT: One commenter stated that with respect to umbrella, excess or other pure liability policies, it would appear that certification is not required since they are not solely automobile liability insurance policies, nor are they required to provide coverages under N.J.S.A. 39:6A-4, particularly as regards PIP coverage. The comment urges the Department to consider specifically excluding umbrella, excess and other such policies, and/or clarify the intent of this regulation.

RESPONSE: These rules only apply to automobile or motor vehicle insurance liability policies, not to umbrella, excess or other pure liability policies.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 32. CERTIFICATION OF COMPLIANCE: MANDATORY LIABILITY COVERAGES

11:3-32.1 Purpose and scope

(a) This subchapter establishes the procedures and requirements for automobile or motor vehicle insurers to certify that automobile or motor vehicle insurance liability policies issued outside of New Jersey provide coverage pursuant to N.J.S.A. 39:6A-3, 39:6A-4, 39:6B-1, 17:28-1.3 and 17:28-1.1, as required under N.J.S.A. 17:28-1.4, whenever the automobile or motor vehicle insured under such a policy is used or operated in this State.

(b) This subchapter applies to each insurer authorized to transact automobile or motor vehicle insurance business in the State pursuant to N.J.S.A. 17:28-1.4.

11:3-32.2 Definitions

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

"Certification" means a written statement certified or sworn to be true and signed by a duly authorized officer of the insurer.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Control" (including the terms "controlling," "controlled by" and "under common control") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of this subchapter.

"NAIC" means the National Association of Insurance Commissioners.

11:3-32.3 Certification compliance requirements

(a) Each insurer authorized to transact automobile or motor vehicle insurance business in this State pursuant to N.J.S.A. 17:28-1.4 shall file a certification of compliance with the Department on its own behalf and on behalf of:

1. Any insurer that is controlled by the insurer authorized to transact insurance business in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage;

2. Any insurer that controls the insurer authorized to transact automobile or motor vehicle liability insurance in this State, which sells a policy providing automobile or motor vehicle liability insurance coverage; and

3. Any insurer under common control by or with the insurer authorized to transact automobile or motor vehicle liability insurance in this State.

(b) The certification insurers are required to file in accordance with (a) above shall include the following information:

1. The name of the insurance company authorized to transact automobile or motor vehicle insurance in New Jersey;

2. The names of insurance companies that transact automobile or motor vehicle insurance in other states or provinces of Canada, that are controlling or controlled by, or are under common control by, or with, the insurer named in (b)1 above;

3. The NAIC group and company number for each insurer named in (b)1 and 2 above;

4. The name, signature, title and telephone number of the company officer authorized to complete the certification; and

5. A statement that the company will provide the coverages required in N.J.S.A. 39:6B-1, N.J.S.A. 39:6A-3, N.J.S.A. 39:6A-4, N.J.S.A. 17:28-1.3 and N.J.S.A. 17:28-1.1 whenever the automobile or motor vehicle insured under the policy is used or operated in this State.

(c) Any insurer that acquires control of, is acquired by or comes under common control of another insurer shall file the required

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certification of compliance within 30 days of this change in control and include the following information:

1. A certification that contains the information provided in (b)1 through 5 above; and

2. The effective date of the changes in control described in (c) above.

(d) Each insurer required to file a certification shall do so *[within 30 days of the effective date of this rule]* ***by October 19, 1994***.

(e) All certifications shall be submitted to the Department at the following address:

New Jersey Department of Insurance
Property/Liability Division
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

11:3-32.4 Requests for copies of certifications

(a) Any person requesting a copy of a certification on file with the Department shall make the request in writing and include the complete name of the company or companies for which the certification is requested.

(b) Requests for copies of certification on file with the Department shall be directed to:

New Jersey Department of Insurance
Property/Liability Division
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

(a)

SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Notice of Administrative Correction
Small Employer Health Benefits Program
Enrollment, Permissible Rate Classification Factors; Optional Benefit Riders
Amendments to N.J.A.C. 11:21 Appendix Exhibits A through F

Take notice that the Small Employer Health Benefits Program Board has discovered an error in the notice of adoption published in the August 15, 1994 New Jersey Register at 26 N.J.R. 3442(b). The appearance of the proposed amendments to N.J.A.C. 11:21 Appendix Exhibits A through F as adopted in that notice was in error, due to a misinterpretation of agency intent during the processing of the notice for publication. The proposed Exhibit amendments were not adopted by the Board for inclusion in that notice of adoption. The Exhibit amendments appearing in that notice were, therefore, not effective July 15, 1994, although they may be adopted by the Board for a later effective date. This notice of administrative correction is published pursuant to N.J.A.C 1:30-2.7.

LABOR

(b)

DIVISION OF BUSINESS AND WORKER DEVELOPMENT

Application and Review Process for Customized Training under Workforce Development Partnership Act

Adopted New Rules: N.J.A.C. 12:23-1 and 2

Proposed: July 5, 1994 at 26 N.J.R. 2770(a).

Adopted: August 25, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: August 26, 1994 as R.1994 d.489, **with substantive changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:15D-1 et seq.

Effective Date: September 19, 1994.

Expiration Date: April 4, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed new rule was held on July 25, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdré L. Webster, Regulatory Officer, was available to preside at the hearing and to receive testimony. However, no one appeared to give testimony on the proposed new rules. As a result, the hearing officer recommended that the rules be adopted with changes not in violation of N.J.A.C. 1:30-4.3. The public hearing record may be reviewed by contacting Deirdré L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, NJ 08625-0110.

Summary of Public Comments and Agency Responses:

Written comments were received from Patrick J. Roma, Chairman, Assembly Labor Committee.

COMMENT: By allowing grants to train "present employees" in non-labor demand occupations on the grounds that the employer is "in need of the training to create jobs," N.J.A.C. 12:23-2.4(a) contradicts the statutory requirement that customized training grants for individual employers be provided only for training in labor demand occupations, except when the training will help save threatened existing jobs.

RESPONSE: To make this portion of the rule consistent with the law and the remainder of the rule, the phrase "create jobs or" is deleted.

COMMENT: Under N.J.A.C. 12:23-2.5(a), some of the "factors that will be required in reviewing and evaluating and approving or disapproving applications" are absolute prerequisites for approval of a grant under the WDPP law. Deeming the factors required in the review, evaluation and even approval of an application may still be misconstrued as meaning that they are not always prerequisites.

RESPONSE: The Department has modified the language in this provision to avoid possible misinterpretation regarding the prerequisites for approval of a grant under the WDPP law.

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 1. DEFINITIONS

12:23-1.1 Definitions

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

"Act" means the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.)

"Administrative cost" means any costs incurred by the Department to administer the program, including any cost required to collect information and conduct evaluations of service providers pursuant to section 8 of P.L. 1992, c.43 and surveys of occupations pursuant to section 12 of P.L. 1992, c.43 to the extent that funding is not available from Federal or other sources.

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"Commissioner" means the Commissioner of Labor or the Commissioner's designees.

"Customized training services" means services that are provided by the Office of Customized Training or through arrangements made or coordinated by the Office of Customized Training.

"Department" means the New Jersey Department of Labor.

"Employability development plan" means a written signed agreement between a qualified job counselor and a claimant in which an occupational goal, course of training or educational and other related activities in the Workforce Development Partnership Program are specified.

"Employer" or "business" means any employer subject to the provisions of N.J.S.A. 43:21-1 et seq.

"Employment and training services" means:

1. Counseling;
2. Vocational training;
3. Remedial education; or
4. Occupational safety and health training.

"Fund" means the Workforce Development Partnership Fund.

"Identifiable job skills" means a specific ability which provides for a reasonable opportunity for employment in an occupation.

"Labor demand occupation" means an occupation for which there is or is likely to be an excess of demand over supply for adequately trained workers as determined by the New Jersey Occupational Information Coordinating Committee or approved by a qualified job counselor based on documented local labor market data and projected labor market conditions.

"New Jersey Occupational Information Coordinating Committee (NJOICC)" is the interagency consortium responsible for developing, managing, and overseeing a Statewide comprehensive occupational labor market supply and demand system to meet the common information needs for the planning for, and the operation of, all public training and job placement programs.

"Occupational safety and health training" means training or education that is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation that is the subject of vocational training.

"Office" means the Office of Customized Training established pursuant to section 5 of P.L. 1992, c.43 (N.J.S.A. 34:15D-5).

"Program" means the Workforce Development Partnership Program.

"Prospective recipient" means an organization, community-based organization, labor organization, employer, consortium, agency, unit of government or other entities which may submit proposals for discretionary funds under the Workforce Development Partnership Program.

"Qualified disadvantaged worker" means a worker who is not a qualified displaced worker or a qualified employed worker, but who otherwise meets the following criteria:

1. Is unemployed;

2. Is working part-time and actively seeking full-time work or is working full-time but is earning wages substantially below the median salary for others in the labor force with similar qualifications and experience; or

3. Is certified by the Department of Human Services as:

i. Currently receiving public assistance;

ii. Having been recently removed from the public assistance rolls because of gross income exceeding the grant standard for assistance; or

iii. Being eligible for public assistance but is not receiving assistance because of a failure to apply for it.

"Qualified displaced worker" means a worker who:

1. Is unemployed, and:

i. Is currently receiving unemployment benefits pursuant to N.J.S.A. 43:21-1 et seq. or any Federal or State unemployment benefit extension; or

ii. Has exhausted eligibility for benefits or extended benefits during the preceding 52 weeks; or

2. Meets the criteria set by Title III of the "Job Training Partnership Act," P.L. 97-300 (29 U.S.C. 1651 et seq.) to be regarded as an "eligible dislocated worker" pursuant to that Act.

"Qualified employed worker" means a worker who is employed by an employer participating in a customized training program.

"Qualified job counselor" means an individual who is engaged in employment counseling and who meets the following standards established by the Commissioner:

1. A qualified job counselor must have a bachelor's degree including or supplemented by:

i. Fifteen college semester hours in vocational guidance or other courses directly related to vocational counseling preparation;

ii. One year of related professional counseling experience; and

iii. Knowledge of State and Federal education laws, employment and training laws, wage and hour laws, and temporary disability and unemployment insurance laws.

2. Substitution of experience for education is allowed, provided the 15 college credits have been successfully completed. Master's degrees in psychology, education, social work and personnel administration may be substituted for the one year of experience.

3. The job counselor must be an employee of the Department or an employee of an organization or agency designated by the Commissioner to deliver Workforce Development Partnership Program services.

4. An individual who is employed as a counselor and who does not meet the qualifications specified in 1 through 3 above, may continue in this function provided that such individual meets the requirements by January 1, 1996 or such further extension as approved on a case-by-case basis by the Commissioner.

"Remedial education" means any literacy or other basic skills training or education that may not be directly related to a particular occupation but is needed to facilitate success in vocational training or work performance.

"Service provider" or "provider" means a provider of employment and training services including, but not limited to, a private or public school or institution of higher education, a business, a labor organization or a community-based organization. A service provider must be located in New Jersey.

"Total revenue dedicated to the program during any one fiscal year" means all monies received for the funding during any fiscal year including monies withdrawn from the State disability benefits fund pursuant to section 3 of P.L. 1992, c.44 (N.J.S.A. 34:15D-14), reduced by any repayment made during that fiscal year from the fund to the State disability benefits fund pursuant to that section.

"Training grant" means a grant provided to fund vocational training and any needed remedial education for a qualified displaced or disadvantaged worker pursuant to section 6 of P.L. 1992, c.43 (N.J.S.A. 34:15D-6).

"Vocational training" means training or education that is related to an occupation and is designed to enhance the marketable skills and earning power of a worker or job seeker.

SUBCHAPTER 2. CUSTOMIZED TRAINING SERVICES; PURPOSE, ELIGIBILITY AND SCOPE

12:23-2.1 Purpose

The purpose of this subchapter is to establish procedures concerning the application and approval process for customized training services under the Workforce Development Partnership Program.

12:23-2.2 Eligibility and scope

(a) The following shall be eligible for customized training services:

1. An individual employer who seeks customized training services to create, upgrade, or retain jobs in a labor demand occupation;

2. An individual employer who seeks customized training services to upgrade or retain jobs in an occupation which is not a labor demand occupation, if the Commissioner determines that the services are necessary to prevent the likely loss of jobs with a negative impact on currently employed workers, or that the services are being provided to employees at a facility which is being relocated into New Jersey;

3. An employer organization, labor organization, or community-based organization seeking customized training services to provide training in labor demand occupations in a particular industry; or

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4. A consortium made up of one or more educational or training institutions and one or more eligible individual employers or labor, employer, or community-based organizations which seek customized training services to provide training in labor demand occupations in a particular industry.

12:23-2.3 Application for customized training assistance

(a) It is the intent of the Workforce Development Partnership Program to link customized training services directly to the demands of the workplace by providing high quality training and education through active participation by New Jersey's business and labor communities. The approval of applications and execution of contracts for the delivery of customized training services will be accomplished in accordance with this intent.

(b) Each applicant seeking customized training services shall submit an application for customized training to the Commissioner in a format approved by the Commissioner. The completed application shall include the applicant's (or if applicable, applicants') name, address, basic descriptive information concerning the applicant, and specific details concerning training needs and requirements. In addition, each employer will submit a business needs plan and a human resources plan. The business needs plan shall include:

1. Justification of the need for the training services and/or funding from the Office of Customized Training, including financial and other information sufficient to demonstrate to the satisfaction of the Commissioner that the applicant will be unable to provide the training service or will provide significantly less of the service if the requested funding is not provided by the Office of Customized Training;

2. A comprehensive long-term human resource development plan which:

i. Extends significantly beyond the period of time in which the services are funded by the Office of Customized Training; and

ii. Significantly enhances the productivity and competitiveness of the employer's operations located in the State and the employment security of workers employed by the employer in the State;

3. Evidence, if the training sought is for an occupation which is not a labor demand occupation, that the customized training services are needed to prevent job loss caused by obsolete skills, technological change, or national or global competition or that the services are being provided to employees at a facility which is being relocated into New Jersey;

4. Information demonstrating that most of the individuals receiving the services will be trained primarily for work in the direct production of goods or services. This does not preclude training in areas of need such as total quality management and remedial education to upgrade workplace literacy; and

5. Any additional information from a specific applicant which the Commissioner deems appropriate.

(c) Non-employer applicants will not be required to submit a business plan but will submit justification of the need for the training services and funding from the Office of Customized Training as noted in (b)1 above and the evidence and information specified in (b)4 above.

(d) For those applicants who are members of a consortium application, an overall justification for the need for training shall be provided by the lead member/organization identifying why the training is critical to this industry.

(e) The New Jersey Occupational Information Coordinating Committee (NJOICC) shall determine or clarify the labor demand status of an occupation which is contained in an application for customized training services upon request by the Office of Customized Training. The NJOICC shall collect, review and analyze worker supply and demand data and other relevant information; evaluate this information in the context of current and projected local, State, and/or regional labor market conditions; and provide a determination of the current and projected labor demand status of the occupation in question. In making this determination, the NJOICC may consider any relevant information provided by the Office of Customized Training and the applicant for customized training services. The determination made by NJOICC shall be utilized by the Department in its review and evaluation of applications for customized training services.

12:23-2.4 Conditions and standards of eligibility for customized training assistance

(a) All vocational training provided shall be training which is likely to enhance substantially the individual's marketable skills and earning power, and shall be training for a labor demand occupation, except for customized training provided to the present employees of a business which the Commissioner deems to be in need of the training to *[create jobs or]* prevent job loss caused by obsolete skills, technological change, or national or global competition, or customized training provided to employees at a facility which is being relocated into New Jersey.

(b) Funds available under the program shall not be used for activities that induce, encourage, or assist any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers, or replacement of laid off workers by trainees, or any relocation of operations outside of the State, resulting in a loss of employment at previous workplaces located in the State.

(c) No activities funded by the program shall impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

(d) Each employer that receives customized training services shall contribute a minimum of 40 percent of the total cost of the customized training services, except that the Commissioner shall set a higher or lower minimum contribution by an applicant, if warranted by the size and economic resources of the applicant or other factors deemed appropriate by the Commissioner. Examples of contributions to the costs of services include items such as training facilities, training material, direct funds and training personnel. Non-employer applicants may be required to contribute to the cost of customized training services at an amount determined by the Commissioner and/or otherwise demonstrate a commitment to training programs through identification of prior programs, staffing or other measures as determined by the Commissioner. However, applications of non-employers would not be rejected on the basis of an inability to make contributions.

(e) Each employer receiving customized training services shall hire or retain in permanent employment each worker who successfully completes the training and education provided through the customized training program. The employer shall be entitled to select those workers who will participate in the customized training, except that if any collective bargaining unit represents an employed worker, the selection shall be conducted in a manner acceptable to both the employer and the collective bargaining unit. The Commissioner of Labor shall withhold such funds as he or she deems necessary as final payment for customized training services contingent upon the hiring and retention of the workers completing the training program. The final payment amount will be stipulated in the contract for customized training services executed between the approved applicant for customized training services and the Department of Labor.

(f) The Department of Labor requires that if the company receiving financial assistance for customized training services relocates out of State within three years following the ending date of the customized training contract, the company must return all monies provided to the company by the State for customized training services.

(g) Any employer seeking customized training services for workers represented by a collective bargaining unit shall notify the collective bargaining unit and permit it to participate in developing the plan. No customized training services shall be provided to a business employing workers represented by a collective bargaining unit without the written consent of both the business and the collective bargaining unit.

(h) Any employer receiving customized training services shall be responsible for providing workers' compensation coverage for any worker participating in the customized training.

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12:23-2.5 Review and evaluation of customized training applications

(a) In accordance with N.J.S.A. 34:15D-1 et seq., the factors that will be required in reviewing and evaluating and approving or disapproving applications for training services will at least include the following:

1. *[Whether]* ***The number of jobs that*** the training will *[result in the creation or retention of jobs]* ***create or retain****;

2. *[Whether]* ***How much*** the training will increase marketable skills and earning power of the participants;

3. *[Whether]* ***How important*** the training is *[critical]* to the applicant's ability to either remain in business or to supply a trained workforce for occupations that are in demand;

4. *[Whether the training will result in permanent employment for the trainees;

5. Whether there will be an emphasis on the training of individuals]* ***What percentage of the individuals trained will receive training for work*** primarily in the direct production of goods and services;

*[6.]***5.*** *[Whether the training will be provided within the context of a Business Needs and]* ***How much the*** long-term Human Resources Development Plan ***will enhance the productivity and competitiveness of the employer's operations in the State and the employment security of workers employed by the employer in the State****;

*[7.]***6.*** Whether the training involves occupational safety and health education which is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation which is the subject of vocational training; and

*[8.]***7.*** The extent to which an applicant who is a previous recipient of a customized training contract has provided opportunity for occupational development, increased productivity and earning power.

(b) All applications will be reviewed and evaluated, with notice of approval or disapproval issued by the Department of Labor.

(c) No application will be funded unless approved by the Commissioner of Labor.

(d) All approved applicants will be required to submit information on training results as required by the Commissioner of Labor. These results may include, but are not limited to, the individual demographics of the participants, data on post training skills and wages, the impact of the training investment on company performance.

(e) The Commissioner retains the authority to modify application review factors based on the changing needs of the New Jersey economy and to establish appropriate application review and approval methods consistent with those conditions.

(f) Upon approval of the application, a contract for customized training services containing the terms and conditions of the application will be executed between the applicant and the Department. A copy of the mandatory contract provisions is available from the Department of Labor upon request.

12:23-2.6 Where to obtain and send an application

(a) Customized training applications may be obtained from the Department of Labor, Office of Customized Training.

(b) Assistance in completing an application is available from the Office of Customized Training.

(c) Completed applications should be forwarded to:

Office of Customized Training
New Jersey Department of Labor
CN 058
Trenton, New Jersey 08625-0058

12:23-2.7 Disclosure of information

(a) Disclosure of information obtained from applicants in the course of administering customized training services under the Workforce Development Partnership Program shall be authorized unless the information requested is non-public information as defined below:

1. Public information includes the name and location of applicants and approved applicants for customized training services as well as the number of trainees, type of training, grant amount and grant time period.

2. Non-public information includes all records concerning financial or proprietary information submitted by applicants or potential applicants for customized training services and by applicants approved for services.

(b) The Department of Labor may deny access to any correspondence, documents or other information where non-disclosure is necessary to protect the public interest.

(a)

DIVISION OF BUSINESS AND WORKER DEVELOPMENT

Occupational Safety and Health Training Services under the Workforce Development Partnership Act

Adopted New Rules: N.J.A.C. 12:23-7

Proposed: July 5, 1994 at 26 N.J.R. 2774(a).

Adopted: August 25, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: August 26, 1994 as R.1994 d.490, **with substantive changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:15D-1 et seq.

Effective Date: September 19, 1994.

Expiration Date: April 4, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed new rule was held on July 25, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdré L. Webster, Regulatory Officer, was available to preside at the hearing and to receive testimony. However, no one appeared to give testimony on the proposed new rule. As a result, the hearing officer recommended that the rule be adopted with changes not in violation of N.J.A.C. 1:30-4.3. The public hearing record may be reviewed by contacting Deirdré L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 100, Trenton, NJ 08625-0110.

Summary of Public Comments and Agency Responses:

Written comments were received from the New Jersey State Industrial Union Council, AFL-CIO.

COMMENT: The language of the second sentence in N.J.A.C. 12:23-7.7(a) is confusing. Is the intent to provide "services" directly by the Department of Labor or funding or both?

RESPONSE: The Workforce Development Partnership Act authorizes the Commissioner of Labor to administer the Workforce Development program. As such, the Commissioner of Labor may provide "... services by means of training grants or customized training services, to the extent that funding is not available from federal or other sources" (P.L. 1992, c.43, §4a). The proposed rule allows the Commissioner latitude in providing these services, which could include obtaining these services from an approved service provider or other appropriate departmental resources. As such, the proposed rule has not been modified, since it is not exclusionary in this process.

COMMENT: N.J.A.C. 12:23-7.10 provides that not more than 10 percent of customized training funds can be used for administrative costs and statistical research expenses. The IUC understands that the DOL requires funds to administer the program. However, why is "statistical research expenses" cited? Is this part of the evaluation process or is it related to allocation of training funds?

RESPONSE: The Workforce Development Partnership Act defines administrative costs as, "Administrative costs means any costs incurred by the Department to administer the program, including any cost to collect information and conduct evaluations of service providers pursuant to section 8 of this act and conduct surveys of occupations pursuant to section 12 of this act, to the extent that funding is not available from federal or other sources" (P.L. 1992, c.43, §3). As such, the "statistical research expenses" contained in the proposed rule is included as part of the 10 percent administrative costs. Since the legislation already

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provides sufficient language to include statistical research as an administrative cost, it is not necessary to repeat it in the rule. Therefore, N.J.A.C. 12:23-7.10 is revised upon adoption to state, "Not more than 10 percent of the funds awarded under this subchapter may be used for reasonable administrative costs."

COMMENT: At N.J.A.C. 12:23-7.5(b), it is unclear what the DOL means in this sentence. Are the specialized services outside contractors? Does the DOL plan to charge a fee to applicants? The intent and language needs to be clarified.

RESPONSE: This rule gives the Department the capacity to review and evaluate applications. The Department does not intend to use outside contractors to evaluate applications and will bear the cost for any specialized services utilized itself. Therefore, no change is made to the language in the proposed rule.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH TRAINING SERVICES

12:23-7.1 Purpose

The purpose of this subchapter is to set forth the rules for the allotment of funds reserved under N.J.S.A. 34:15D-4(e) to provide occupational safety and health training services under the Workforce Development Partnership Program.

12:23-7.2 Scope

This subchapter establishes the allocation of funds reserved under the Workforce Development Partnership Program for occupational safety and health training services to qualified displaced, disadvantaged and employed workers as defined at N.J.A.C. 12:23-1 and who are participating in training or education which is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation which is the subject of vocational training. It sets forth the application, review and administrative process for awarding grants and the administration of this program under this subchapter to prospective recipients, including organizations such as labor organizations, consortia, corporations, agencies, or other entities. This subchapter is not applicable to individual grants.

12:23-7.3 Occupational safety and health training grants to serve qualified displaced, disadvantaged and employed workers

A portion of funds reserved for occupational safety and health training services to qualified displaced, disadvantaged, and employed workers will be awarded through an application process for prospective recipients in accordance with N.J.A.C. 12:23-7.4 and 7.5.

12:23-7.4 Application process

Each applicant seeking funding to provide occupational safety and health training services to qualified displaced, disadvantaged and employed workers shall submit an application to the Commissioner. The completed application shall include the applicant's name and address, basic descriptive information concerning the prospective recipient, specific details documenting the need for and exact nature of the proposed occupational safety and health training services to be delivered, its relationship to individuals involved in a vocational training experience, the anticipated number of individuals or target group to be served and cost of services, and any other information concerning a specific applicant which the Commissioner deems necessary to fully evaluate the application.

12:23-7.5 Review and evaluation of applications

(a) Occupational safety and health training under the Workforce Development Partnership Program means training or education which is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation which is the subject of vocational training. The factors that will be considered in reviewing and evaluating applications for funds are:

1. The number of individuals who will benefit from the safety and health training services;

2. The target industry and/or occupation and subject matter for training services;

3. The degree of hazard faced within the target industry and/or occupation as demonstrated by accident and injury documentation, exposure information, and other data illustrating hazards;

4. The need for services as demonstrated by the seriousness of the problem and lack or scarcity of alternative resources;

5. The extent to which the services are related to training for a labor demand occupation;

6. The extent to which the services are likely to enhance participants' marketable skills;

7. The organizational capability of the prospective recipient to provide the proposed services;

8. The previous effectiveness of efforts of the prospective recipient in providing similar services;

9. The cost of the proposed services; and

10. The potential for the proposed services to be replicated throughout the State or to have a positive impact beyond the ending date of the proposed services.

(b) Applications will be reviewed and evaluated by the Department of Labor and in consultation with specialized services which may be provided by the Department on a cost basis.

(c) The Commissioner retains the authority to modify application review factors based on changing workplace occupational safety and health training needs and establish appropriate application review and approval methods consistent with those circumstances. Such modification shall be through the rulemaking process.

(d) No application will be funded unless approved by the Commissioner of Labor.

(e) Funds awarded under this section will be limited to prospective recipients and to approve service and/or training providers as defined at N.J.A.C. 12:23-1.1.

(f) Upon approval of an application, a contract for occupational safety and health training services will be executed between the approved applicant and the Department. A copy of mandatory contract provisions is available from the Department of Labor upon request.

(g) The Commissioner or his or her designee will identify target industries and/or occupations, provide information and assistance to prospective recipients and employment and training staff, review and evaluate applications, execute, monitor, and evaluate contracts for training services, and provide technical support for contracted activities.

(h) Instructions for the application process for funds available under this section shall be obtained by writing to:

Assistant Commissioner for Employment Security and Job Training
New Jersey Department of Labor
CN 058
Trenton, New Jersey 08625

12:23-7.6 Assessment of need and delivery of services

(a) The Commissioner or his or her designee, within the Department of Labor, will review all customized training applications to determine if there is a need for occupational safety and health training services related to the industry and/or occupation which is the subject of vocational training.

(b) The Commissioner or his or her designee, within the Department of Labor, will review and approve the use of vendors selected by the customized training applicant to provide occupational safety and health training services, review course content and training material to determine its appropriateness and relationship to the occupational training, and ascertain the reasonableness of costs charged by vendors.

12:23-7.7 Allocation of funds

(a) Pursuant to section 4(e) of the Act, not less than three percent of the total revenues dedicated to the program during any one fiscal year shall be reserved for occupational safety and health training. The Commissioner is authorized to provide services to the extent that funding for these services is not available from federal or other sources.

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(b) From the amounts reserved for occupational safety and health training for qualified displaced, disadvantaged and employed workers under N.J.S.A. 34:15D-4(e), monies may be allocated upon approval of the Commissioner of Labor to providers of employment and training services designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation which is the subject of vocational training.

(c) The Commissioner retains the authority to change the scope of this funding based on changing workplace occupational safety and health training needs.

12:23-7.8 Eligibility for services

Individuals receiving training or services under this subchapter must be qualified displaced, disadvantaged, or employed workers as defined at N.J.A.C. 12:23-1.1.

12:23-7.9 Eligibility of service providers

Occupational safety and health training services must be obtained from an approved service provider located in the State of New Jersey.

12:23-7.10 Limitation on administrative costs

Not more than 10 percent of the funds awarded under this subchapter may be used for reasonable administrative *[and statistical research expenses]* ***costs***.

12:23-7.11 Monitoring and oversight

The Commissioner or his or her designee, within the Department of Labor, will monitor the overall effectiveness of the occupational safety and health training services provided under this subchapter to assess the programmatic, management, and financial performance of the grantee(s). The Department will consider the past performance of a grantee in evaluating application(s) for funding in subsequent years.

12:23-7.12 Evaluation of occupational safety and health training

The results of occupational safety and health training services provided under this subchapter shall be evaluated based upon criteria negotiated at the time the funds are awarded.

12:23-7.13 Records and reports

(a) Each grantee shall maintain appropriate records and make any records available upon request for monitoring or inspection by the Commissioner including:

1. A record for each student enrolled, including the student's name, social security number, and address upon enrollment;

2. A record of all direct administrative and overhead expenses of the grantee related to the provision of occupational safety and health training services funded under this subchapter; and

3. Any other information deemed appropriate by the Commissioner for a specific granteee or service provider.

(a)

OFFICE OF JTPA PROGRAMS

Job Training Partnership Act (JTPA): Non-Criminal Complaint/Grievance, Hearing and Review Procedures at Employer, SDA, State and Federal Level

Adopted Amendments: N.J.A.C. 12:41-1.2 and 1.14

Proposed: July 18, 1994 at 26 N.J.R. 2864(a).

Adopted: August 26, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: August 26, 1994 as R.1994 d.491, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 20 U.S.C.A. Sec. 1554 and 20 CFR Sec. 627.500 et seq.

Effective Date: September 19, 1994.

Expiration Date: January 14, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed amendment was held on August 3, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdré L. Webster, Regulatory Officer, was available to preside at the hearing and receive testimony. However, no one appeared to give testimony on the proposed amendment. As a result, the hearing officer recommended that the amendment be adopted as proposed. The public hearing record may be reviewed by contacting Deirdré L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, NJ 08625-0110.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

12:41-1.2 Scope

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

(g) Nothing in this subchapter shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for violation of Section 143 of the JTPA.

12:41-1.14 Section 143 labor standards complaints: binding arbitration

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

(e) The grievant may pursue remedies authorized under another Federal, State, or local law for violation of Section 143 of the JTPA.

(b)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Readoption with Amendments: N.J.A.C. 12:100

Proposed: July 5, 1994 at 26 N.J.R. 2776(a).

Adopted: August 25, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: August 26, 1994 as R.1994 d.492, **without change**.

Authority: N.J.S.A. 34:20-1, 34:1A-3(c); and 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Effective Date: August 26, 1994, Readoption;
September 19, 1994, Amendments.

Expiration Date: August 26, 1999.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed readoption with amendments was held on July 28, 1994, at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdré L. Webster, Regulatory Officer, presided at the hearing and received testimony. She responded to certain statements made during the course of testimony and recommended that the rules be readopted as proposed.

Persons wishing to review the transcript of the hearing may contact Deirdré L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, CN 110, Trenton, NJ 08625-0110.

Summary of Public Comments and Agency Responses:

It is first recognized that the members of the Advisory Board on Public Employees Occupational Safety and Health unanimously support the rules as proposed. Written and oral comments were received from Tom Canzanella, Director, Occupational Health and Safety, Firefighters Association of New Jersey/International Association of Firefighters. Karen Black, Staff Representative, Communication Workers of America and Jerri Wilkerson, Safety Manager, New Jersey Highway Authority expressed support for the PEOSH program in general. Joe Orth, Program Coordinator, Rutgers University, Rutgers Road Technical Transfer Program, presented extensive proposals relating to traffic flaggers and directors, which included conformance with the Manual On Uniform Traffic Control Devices and the dangers faced by road workers. These proposals will be considered for future rule reviews. The present road construction safety rules are being readopted without change at this time.

COMMENT: There should be no allowance for cutting a ¾ length boot down to a bunker boot height as provided by the amendment to N.J.A.C. 12:100-10.5

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RESPONSE: Cutting down a ¾ length boot that meets NFPA 1974-1987 should not compromise the protection that the boot offers as long as it is worn in conjunction with bunker pants. It should be emphasized that ¾ boots are still acceptable to be used for purposes other than interior structural firefighting.

COMMENT: There is no objection to the amendment in N.J.A.C. 12:100-10.12 which requires the PASS device to be worn on the exterior of the turn out gear as opposed to the original standard requiring it only be worn on the SCBA. However, each firefighter should be issued a device.

RESPONSE: The standard does not require that each firefighter be issued a PASS device. It only provides that such a device be worn during interior structural firefighting activities, working in confined spaces, and during all phases of overhaul. The employer is responsible for ensuring that the PASS device is provided and worn when required. This allows flexibility, especially for volunteer fire companies, to distribute necessary equipment where there may not be enough PASS devices for each individual to have one personally assigned.

COMMENT: Contrary to the amendment in N.J.A.C. 12:100-10.15 firefighters should be seated and belted while enroute to any and all emergencies. There are certain times when a firefighter should need not don his turn out coat in order to reduce heat stress in the summer.

RESPONSE: The standard adopted in 1988 requires restraining by January 4, 1998. However, it does not mandate that the firefighter be seated and such additional requirement should not be imposed due to differences in fire apparatus. When responding to a fire alarm, it is necessary, despite weather conditions, to be ready for firefighting activity on arrival.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:100.

Full text of the adopted amendments follows:

12:100-8.2 Definitions

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

. . .

"HEPA" means a high efficiency particulate absolute filter which is 99.97 percent efficient for 0.3 microns.

. . .

12:100-8.5 Ventilation system

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

12:100-8.7 Water Drains

Each firing range should be equipped with a floor drain and trap to facilitate cleaning by a wet method. The drain location should be approximately 20 feet down range of the firing line. The floor should slope two to three inches toward the drain.

12:100-10.2 Definitions

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

. . .

"Remanufactured" means the complete dismantling and reassembly of the fire apparatus body with or without removal from the chassis during the process.

12:100-10.5 Protective clothing

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

(c) The employer shall assure that:

1.-2. (No change.)

3. Career firefighters wear foot, leg and body protective clothing complying with this subchapter except that existing foot, leg and body protection meeting the previous OSHA standards that are superseded by this subchapter may continue to be worn until January 4, 1995.

4. Volunteer firefighters wear foot, leg and body protective clothing that meet the previous OSHA standards that are superseded by this subchapter until either they become unserviceable or replaced.

12:100-10.8 Protective clothing; hand protection

(a) (No change.)

(b) The performance, construction, and testing of gloves for structural firefighters shall be at least equivalent to NFPA No. 1973-1988, Gloves for firefighters incorporated herein by reference.

12:100-10.12 Personal alert safety system

(a) The employer shall provide, at no cost to the employee, and assure the use of, a personal alert safety system which complies with this section.

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

(d) Approved personal alert safety systems shall be provided and worn by the firefighters as follows:

1. While engaged in interior structural firefighting;

2. While working in confined spaces;

3. During all phases of overhaul; and

4. The PASS device shall be attached to the exterior of the firefighter's turnout gear.

12:100-10.15 Fire apparatus operations

(a) Whenever a fire apparatus leaves the fire station in response to a fire alarm, all firefighters, except the driver of the fire apparatus, shall have donned their protective clothing before the apparatus is in motion. The term "fire apparatus" does not include an automobile.

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

12:100-17.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1.-13. (No change.)

14. NFPA No. 1973-1988 Gloves for Structural Firefighters

15.-28. (No change.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES
DEPARTMENT OF INSURANCE

Driver Control Service

Readoption with Amendments: N.J.A.C. 13:19-1 to 9, inclusive, and 13:19-11

Adopted Amendments: N.J.A.C. 13:19-10 and 13:19-13

Proposed: July 5, 1994 at 26 N.J.R. 2738(a).

Adopted: August 15, 1994 by C. Richard Kamin, Director, Division of Motor Vehicles as to only N.J.A.C. 13:19-1 to 9, inclusive, and 13:19-10 and 11; and August 16, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance, in consultation with C. Richard Kamin, Director, Division of Motor Vehicles, as to only N.J.A.C. 13:19-13.

Filed: August 17, 1994 as R.1994 d.468, **without change**.

Authority: N.J.S.A. 17:29A-35, 39:2-3, 39:3-10, 39:3-10.4 et seq., 39:3-11, 39:3-15, 39:3-15.1, 39:3-16, 39:5-30, 39:5-30.1, 39:5-30.5, 39:5D-4, 39:5F-1 et seq., 52:14B-1 et seq. and Pub. L. 99-570.

Effective Date: August 17, 1994, Readoption;
September 19, 1994, Amendments.

Expiration Date: August 17, 1999 as to N.J.A.C. 13:1 to 9, inclusive, and 13:19-11; expiration of N.J.A.C. 13:19-10, 12 and 13 was waivered (see 26 N.J.R. 2905(a)).

On August 15, 1994, C. Richard Kamin, Director of the Division of Motor Vehicles, pursuant to authority of N.J.S.A. 17:29A-35, 39:2-3, 39:3-10, 39:3-10.4 et seq., 39:3-11, 39:3-15, 39:3-15.1, 39:3-16, 39:5-30, 39:5-30.1, 39:5-30.5, 39:5D-4, 39:5F-1 et seq., 52:14B-1 et seq. and Pub. L. 99-570 and in accordance with the applicable provisions of the Administrative Procedure Act, readopted N.J.A.C. 13:19-1 to 9, inclusive, and N.J.A.C. 13:19-11 with amendments as proposed in the Notice published on July 5, 1994 at 26 N.J.R. 2738(a).

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On June 29, 1994, Governor Whitman directed that the five-year sunset provision of Executive Order No. 66(1978) be waived for subchapters 10, 12, and 13 of N.J.A.C. 13:19. See: 26 N.J.R. 2905(a). In light of the Governor's directive, readoption of these subchapters is made unnecessary since they are no longer subject to the sunset provision of Executive Order No. 66(1978). However, certain rules within subchapters 10 and 13 of N.J.A.C. 13:19 were proposed for amendment in the Notice published on July 5, 1994 at 26 N.J.R. 2738(a). Accordingly, on August 15, 1994, C. Richard Kamin, Director of the Division of Motor Vehicles, pursuant to authority of N.J.S.A. 39:2-3, 39:3-10, 39:5-30, 39:5-30.1, 39:5-30.5 and 39:5D-4 and in accordance with the applicable provisions of the Administrative Procedure Act, adopted the amendments to N.J.A.C. 13:19-10 as proposed in the Notice published on July 5, 1994 at 26 N.J.R. 2738(a). Accordingly, on August 16, 1994, Andrew J. Karpinski, Commissioner, Department of Insurance, in consultation with C. Richard Kamin, Director of the Division of Motor Vehicles, pursuant to authority of N.J.S.A. 17:29A-35 and in accordance with the applicable provisions of the Administrative Procedure Act, adopted the amendments to N.J.A.C. 13:19-13 as proposed in the Notice published on July 5, 1994 at 26 NJ.R. 2738(a).

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in the previously cited edition of the New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. **No comments were received** from the public with regard to the proposal.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:19-1 through 9, inclusive, and 13:19-11.

Full text of the adopted amendments follows:

13:19-1.8 Prehearing conference; purpose; conduct; report; transmittal to the Office of Administrative Law

(a) The purpose of the prehearing conference is to clarify disputed material facts and legal issues raised in the hearing request; to review the evidence upon which the licensee bases his or her claim; to ascertain the discovery needs of the licensee; to supply the licensee with any discovery to which the licensee may be entitled under the Uniform Administrative Procedure Rules; and to attempt to resolve the administrative action to be taken.

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

13:19-5.7 Committee recommendations

Notwithstanding the provisions of N.J.A.C. 13:19-5.1, the Director, upon consultation with the members of the Committee, may grant a learner's permit or initial driver's license or permit a motorist to retain his driver's license although such person may have suffered a seizure, period of impaired consciousness, or from impairment or loss of motor coordination within a one year period from the date of the Director's determination when the specific characteristics of a person's disorder do not adversely impact on the person's ability to safely operate a motor vehicle.

13:19-5.8 Restoration qualifications

(a) When the Director has denied an applicant a driver's license or has suspended the license of a licensed operator pursuant to this subchapter, issuance or restoration may be considered providing the individual submits:

1.-3. (No change.)

4. Satisfactory evidence that N.J.A.C. 13:19-5.1 or 13:19-5.5 have been complied with where applicable.

13:19-9.1 Designation of State official; notification

(a) The Manager, Regulatory Affairs, is designated as the State official to be notified, pursuant to the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, concerning out-of-state motor vehicle convictions.

(b) A driver of a commercial motor vehicle, as defined in the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, shall submit within 30 days of conviction a notice concerning an out-of-state conviction(s) for a violation(s) of any law relating to motor vehicle traffic control to the following address:

Manager, Regulatory Affairs
Division of Motor Vehicles
CN 174
Trenton, New Jersey 08666-0174

13:19-10.1 Point assessment

Any person who is convicted of any of the following offenses, including offenses committed while operating a motorized bicycle, shall be assessed points for each conviction in accordance with the following schedule:

Section Number	Offense	Points
1.-14. (No change.)		
15. N.J.S.A.		
39:4-66.2	Operating a motor vehicle on public or private property to avoid a traffic control signal or sign	2

Recodify existing 15.-52. as 16.-53. (No change in text.)

13:19-10.3 Driver improvement program attendance

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

13:19-10.6 Restoration; official warning; completion of Driver Improvement or Probationary Driver Program

(a) Persons whose licenses are restored after a suspension imposed under N.J.A.C. 13:19-10.2 or after a supension imposed under this section, persons who are officially warned after an administrative hearing, and persons who successfully complete a Division Driver Improvement Program or Probationary Driver Program may retain their licenses upon the express condition and understanding that any subsequent violation of the Motor Vehicle Laws of the State of New Jersey committed within one year of the restoration, official warning, or warning following successful completion of a Driver Improvement or Probationary Driver Program shall, except for good cause, result in suspension of driving privileges for the following periods:

1.-3. (No change.)

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

13:19-13.1 Surcharges for three year period; convictions; amounts

(a) (No change.)

(b) The following violations shall be subject to surcharges as indicated in (a) above for the amount set forth below:

1.-2. (No change.)

3. N.J.S.A.

39:4-14.3e	Failing to have insurance on motorized bicycle	$100.00

4. (No change.)

13:19-13.3 (Reserved)

(a)

DIVISION OF MOTOR VEHICLES

Administrative Hearings; Driver Licenses; Examination Permits; Special Learner's Permits; Identification Cards for Nondrivers; Motorized Bicycle Licenses; Motorized Bicycle Learner's Permits

Adopted Amendments: N.J.A.C. 13:19-1.1, 13:21-7.1, 8.1, 8.2 and 8.4, and 13:25-1.1, 3.1 and 3.3

Adopted New Rules: N.J.A.C. 13:21-16 and 13:25-2.1

Adopted Repeals: N.J.A.C. 13:21-6.3 and 13:25-2.2

Adopted Repeals and New Rules: N.J.A.C. 13:21-6.1, 6.2, 7.2, 7.3 and 7.4

Proposed: June 20, 1994 at 26 N.J.R. 2522(a).

Adopted: July 27, 1994 by C. Richard Kamin, Director, Division of Motor Vehicles.

Filed: August 26, 1994 as R.1994 d.486, **without change**.

Authority: N.J.S.A. 39:2-3, 39:3-10, 39:3-11.3, 39:3-13, 39:3-13.1, 39:3-29.9, 39:4-14.3, 39:5-30 and P.L. 1993, c.34

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Effective Date: September 19, 1994.
Expiration Date: August 17, 1999, N.J.A.C. 13:19;
December 13, 1995, N.J.A.C. 13:21;
March 16, 1995, N.J.A.C. 13:25.

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in the previously cited edition of the New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal.

Two persons forwarded comments to the Division of Motor Vehicles with regard to the proposal. The two commenters were: Peter J. Bartus and S. Mores. The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 225 East State Street, 9th Floor, Trenton, New Jersey 08666.

Both of the commenters were in agreement with the Division's proposal. The Division acknowledges receipt of these comments in support of the proposal.

Full text of the adoption follows:

SUBCHAPTER 1. ADMINISTRATIVE HEARINGS

13:19-1.1 Applicability

The provisions of this subchapter shall apply to administrative hearings in cases involving denial, revocation, suspension or refusal to renew licenses, examination permits, special learner's permits, nondriver identification cards, motorized bicycle licenses, motorized bicycle learner's permits, or driving privileges, including cases involving imposition of insurance surcharges pursuant to N.J.S.A. 17:29A-35. However, the provisions of this subchapter shall not apply to hearings in fatal accident cases in which the Division has initiated administrative suspension action against a licensee pursuant to subsection b, c, or e of N.J.S.A. 39:5-30; requests for hearings and the scheduling and conduct of same in such cases are governed by the provisions of subsection b or e of N.J.S.A 39:5-30.

SUBCHAPTER 6. EXAMINATION PERMITS

13:21-6.1 Definitions

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

"Examination permit" means a permit issued by the Director of the Division of Motor Vehicles to a person over 17 years of age, in accordance with the provisions of N.J.S.A. 39:3-13, for the purpose of fitting himself or herself for the issuance of a New Jersey basic driver's license or motorcycle license.

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

13:21-6.2 Requirements for issuance of examination permits

In addition to any other requirements imposed by Title 39 of the Revised Statutes and the regulations promulgated thereunder, no examination permit shall be issued by the Division unless the applicant therefor submits proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).

13:21-6.3 Prerequisites for validation of examination permits

(a) No examination permit shall be validated for practice driving until the following prerequisites have been complied with by the holder:

1.-2. (No change.)

SUBCHAPTER 7. SPECIAL **LEARNER'S** PERMITS

13:21-7.1 Definitions

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

"Special learner's permit" means a permit issued to a person over 16 years of age, in accordance with the provisions of N.J.S.A. 39:3-13.1, allowing such person, for the purpose of fitting himself or herself to become a motor vehicle driver, to operate a dual pedal controlled motor vehicle while enrolled in a course of behind-the-wheel automobile driving education approved by the New Jersey State Department of Education and conducted in a public, parochial or private school of this State or while taking a course of behind-the-wheel automobile driving instruction conducted by a licensed driving school, and which, in accordance with the provisions of N.J.S.A. 39:3-13.2a may, upon successful completion of a behind-the-wheel driving course, be retained by the holder to operate a motor vehicle of the class for which a basic driver's license is required except during the hours between 12:01 A.M. and 5:00 A.M. while in the company and under the control of a licensed motor vehicle driver of this State who has at least three years experience as a licensed motor vehicle driver.

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

13:21-7.2 Requirements for issuance of special learner's permits

In addition to any other requirements imposed by Title 39 of the Revised Statutes and the regulations promulgated thereunder, no special learner's permit shall be issued by the Division unless the applicant therefor submits proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).

13:21-7.3 Driving test appointment requirements

(a) Driving test appointments may be granted and recorded on the special learner's permit prior to 17th birthday of the applicant; provided that:

1. The student will be at least 17 years of age on the date of the appointment;

2. (No change.)

3. The special learner's permit, when presented for the driving test, bears the Snellen eye reading recorded by the school nurse or a representative of the Division of Motor Vehicles;

4. The special learner's permit, when presented for the driving test, bears the signatures of the school principal or driving school owner, school nurse and student. A school principal, driving school owner or school nurse may use a signature stamp in place of a handwritten signature.

5. The student will have completed an approved "behind-the-wheel" training course on the date of the appointment.

13:21-7.4 Method of securing appointment

A student may present his or her special learner's permit at any Driver Testing Center for the purpose of securing an appointment for the driving test; provided, however, that the applicant has completed six hours of "behind-the-wheel" automobile driver training.

13:21-7.5 Validation of special learner's permits

(a) A special learner's permit is valid for practice driving a motor vehicle of the class for which a basic driver's license is required while the holder of the special learner's permit is in the company and under the control of a licensed driver of this State who has had at least three years experience as a licensed motor vehicle driver when:

1. (No change.)

2. The Snellen eye reading has been recorded on the special learner's permit by the school nurse. The eye reading may be recorded by a representative of the Division of Motor Vehicles if the eye reading has not been recorded by the school nurse.

3. The signature of the school principal or driving school owner, school nurse and student must be on the special learner's permit. A school principal, driving school owner or school nurse may use a signature stamp in place of a handwritten signature.

(b) If a student has not completed six hours of "behind-the-wheel" driving training, he or she must purchase an examination permit before the driving test appointment.

(c) A special learner's permit is not valid during the hours beween 12:01 A.M. and 5:00 A.M.

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SUBCHAPTER 8. DRIVER LICENSES

13:21-8.1 Definitions

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

"Applicant" means every person who has made application for a license as provided in N.J.S.A. 39:3-10 or who has compiled with the provisions of N.J.S.A. 39:3-11.1, 39:3-13 or 39:3-13.1 et seq.

"Driving test" means that portion of the driver license examination wherein the applicant for a New Jersey basic driver's license or motorcycle license demonstrates his or her ability to exercise safe and reasonable control in the operation of a motor vehicle of the type or general class of vehicles for which the license he or she has applied for would be valid.

"Examinations" means a test or series of tests designed to check the applicant's visual acuity, color perception, knowledge of laws and safe operation of motor vehicles administered by the Division of Motor Vehicles.

"Permit" means a special learner's permit, examination permit or any written instrument issued under the provisions of N.J.S.A. 39:3-13 or 39:3-13.1 et seq.

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

13:21-8.2 Age requirements; proof of identity and date of birth; proof that presence in United States is authorized under Federal law

(a) All applicants must have reached the age of 17 years, except applicants making application under the provisions of N.J.S.A. 39:3-11.1 or 39:3-13.1.

(b) As a condition for obtaining a license, all applicants shall be required to furnish to the Division proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law. Such proof may be established by submission of the original or certified copy of any of the following documents:

1. A United States birth certificate showing the name and date of birth of the applicant and bearing the registrar's signature and seal of office;

2. A United States government identification card issued to persons serving in the United States military;

3. United States military discharge papers;

4. A current alien registration card issued by the United States Department of Immigration and Naturalization;

5. A passport issued by the United States or passport issued by a foreign country accompanied by a current form I-94 or equivalent document;

6. United States citizenship papers;

7. A Certificate of Naturalization issued by the United States Department of Immigration and Naturalization;

8. A current employment authorization card issued by the United States Department of Immigration and Naturalization when accompanied by a Social Security card;

9. United States adoption papers; or

10. Any other documents issued by the United States which establish the applicant's proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law.

(c) The identity of the applicant shall be deemed to be the name recorded on the document(s) submitted to the Division pursuant to this section unless evidence of a different name is established by the submission of a civil marriage certificate, divorce decree or order of court.

(d) Any person from a foreign country who is in New Jersey for a period of one year or less may operate a motor vehicle in this State if he or she is the holder of a current dirver's license in good standing from the country in which he or she resides provided that such license authorizes operation of the class of vehicle to be operated in this State. The Director may deny, suspend or revoke the driving privilege conferred by this subsection for violation of any of the provisions of Title 39 of the Revised Statutes or on other reasonable grounds upon notice and an opportunity to be heard pursuant to the procedures in N.J.A.C. 13:19-1.

(e) Any person from a foreign country who is in New Jersey for a period of one year or less and who would be entitled to operate a motor vehicle in this State pursuant to (d) above but for the fact that he or she is not the holder of a driver's license from the country in which he or she resides shall be eligible to make application for a New Jersey driver's license or permit. The Director shall suspend or revoke any driver's license or permit issued pursuant to this subsection upon expiration of the license or permit holder's lawful presence in the United States unless it is demonstrated that the person's continued presence in the United States is authorized under Federal law.

(f) The Division shall not issue a driver's license or permit to a person who is entitled to operate a motor vehicle in this State pursuant to (d) above or who is entitled to operate a motor vehicle in this State under a reciprocity privilege granted by any law, unless said reciprocity privilege is revoked or terminated by the establishment of residence in this State and the surrender of said person's current out-of-State driver's license to the Division upon issuance of a New Jersey driver's license.

13:21-8.4 Physical and mental qualifications

(a) A person may be prohibited from obtaining or holding a New Jersey driver's license or permit if he or she:

1.-2. (No change.)

(b) In the case of a mental or physical disability, a medical certificate, completed by a New Jersey licensed physician, may be required.

SUBCHAPTER 16. IDENTIFICATION CARDS FOR NONDRIVERS

13:21-16.1 Definitions

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

"Nondriver identification card" means an identification card issued by the Director of the Division of Motor Vehicles to a person whose state of residence is New Jersey and who is 17 years of age or older and who is not the holder of a valid examination or special learner's permit or a valid driver license, in accordance with the provisions of N.J.S.A. 39:3-29.2 et seq.

"State of residence" means that state where a person has a true, fixed, and permanent home and principal residence and to which the person intends to return whenever the person is absent.

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

13:21-16.2 Requirements for issuance of nondriver identification cards

In addition to any other requirements imposed by Title 39 of the Revised Statutes and the regulations promulgated thereunder, no nondriver identification card shall be issued by the Division unless the applicant therefor submits proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).

13:25-1.1 Definitions

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

"Applicant" means every person who has made application for a motorized bicycle license as provided by N.J.S.A. 39:4-14.3.

"Examinations" means a test or series of tests designed to check the applicant's visual acuity, color perception, knowledge of laws and safe operation of motorized bicycles administered by the Division of Motor Vehicles.

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"Motorized bicycle" means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 c.c. or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

"Motorized bicycle learner's permit" means a permit issued by the Director of the Division of Motor Vehicles to a person 15 years of age or older in accordance with the provisions of N.J.S.A. 39:4-14.3 for the purpose of fitting himself to become a motorized bicycle driver.

"Motorized bicycle driving test" means that portion of the motorized bicycle operator license examination wherein the applicant for a New Jersey motorized bicycle operator license demonstrates his or her ability to exercise safe and reasonable control in the operation of a motorized bicycle.

"Motorized bicycle operator's license" means a motorized bicycle license issued by the Director of the Division of Motor Vehicles, in accordance with the provisions of N.J.S.A. 39:4-14.3, to an individual who is 15 years of age or older and who does not have a New Jersey driver license of any class other than an agricultural license issued pursuant to N.J.S.A. 39:3-11.1.

"Permit" means a motorized bicycle learner's permit issued under the provisions of N.J.S.A. 39:4-14.3. Anyone operating a motorized bicycle under a permit for the purpose of fitting himself or herself to become a motorized bicycle operator shall limit said operation to daylight hours under any circumstances.

"United States" means any state, territory or possession of the United States and the District of Columbia, including the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa and Guam.

SUBCHAPTER 2. MOTORIZED BICYCLE LEARNER'S PERMITS

13:25-2.1 Requirements for issuance of motorized bicycle learner's permits

In addition to any other requirements imposed by Title 39 of the Revised Statutes and the regulations promulgated thereunder, no motorized bicycle learner's permit shall be issued by the Division unless the applicant therefor submits proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).

13:25-2.2 Prerequisites for validation of motorized bicycle learner's permits

(a) No motorized bicycle learner's permit shall be validated for practice driving until the following prerequisites have been complied with by the holder:

1. Successful completion of a law-knowledge test; and
2. Minimum standard in visual acuity is attained.

SUBCHAPTER 3. MOTORIZED BICYCLE LICENSES

13:25-3.1 Age requirements; proof of identity and date of birth; proof that presence in United States is authorized under Federal law

(a) All applicants must have reached the age of 15 years.

(b) As a condition for obtaining a motorized bicycle license, all applicants shall be required to furnish to the Division proof of identity and date of birth and proof that the applicant's presence in the United States is authorized under Federal law in the manner set forth in N.J.A.C. 13:21-8.2(b).

(c) The identity of the applicant shall be deemed to be the name recorded on the document(s) submitted to the Division pursuant to (b) above unless evidence of a different name is established by the submission of a civil marriage certificate, divorce decree or order of court.

(d) Any person from a foreign country who is in New Jersey for a period of one year or less may operate a motorized bicycle in this State if he or she is the holder of a current driver's license or motorized bicycle license in good standing from the country in which he or she resides. The Director may deny, suspend or revoke the driving privilege conferred by this subsection for violation of any of the provisions of Title 39 of the Revised Statutes or on other reasonable grounds upon notice and an opportunity to be heard pursuant to the procedures in N.J.A.C. 13:19-1.

(e) Any person from a foreign country who is in New Jersey for a period of one year or less and who would be entitled to operate a motorized bicycle in this State pursuant to (d) above but for the fact that he or she is not the holder of a driver's license or motorized bicycle license from the country in which he or she resides shall be eligible to make application for a New Jersey motorized bicycle license or learner's permit. The Director shall suspend or revoke any motorized bicycle license or learner's permit issued pursuant to this subsection upon expiration of the license or permit holder's lawful presence in the United States unless it is demonstrated that the person's continued presence in the United States is authorized under Federal law.

(f) The Division shall not issue a motorized bicycle license or learner's permit to a person who is entitled to operate a motorized bicycle in this State pursuant to (d) above, or who is entitled to operate a motorized bicycle in this State under a reciprocity privilege granted by any law, unless said reciprocity privilege is revoked or terminated by the establishment of residence in this State and the surrender of said person's current out-of-state license to the Division upon issuance of a New Jersey driver's license or motorized bicycle license.

13:25-3.3 Physical and mental qualifications

(a) A person may be prohibited from obtaining or holding a New Jersey motorized bicycle license or learner's permit if he or she:

1.-2. (No change.)

(b) In the case of a mental or physical disability, a medical certificate, completed by a New Jersey licensed physician, may be required.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Identification of Licensees and Permittees

Proposed Amendments: N.J.A.C. 13:31-1.9

Proposed: March 7, 1994 at 26 N.J.R. 1218(b).
Adopted: June 1, 1994 by the State Board of Examiners of Electrical Contractors, Edward O'Hara, President.
Filed: August 26, 1994 as R.1994 d.487, **without change**.
Authority: N.J.S.A. 45:5A-1.
Effective Date: September 19, 1994.
Expiration Date: November 20, 1996.

The State Board of Examiners of Electrical Contractors afforded all interested parties an opportunity to comment on the proposed amendment of N.J.A.C. 13:31-1.9, Identification of licensees and permittees. The official comment period ended on April 6, 1994.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on March 7, 1994 at 26 N.J.R. 1218(b). Announcements were also forwarded to The Star Ledger, The Trenton Times, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Executive Director of the State Board of Examiners of Electrical Contractors, Christine DeGregorio, 124 Halsey St., P.O. Box 45006, Newark, NJ 07101.

Summary of Public Comments and Agency Responses:

During the 30 day comment period, the Board received written comments regarding the proposed amendments from Lawrence T. Bulava, Chairman, Code and Standard Committee, Northern New Jersey Chapter, Inc. of the National Electrical Contractors Association.

COMMENT: On behalf of the Association, Mr. Bulava asked how the Board proposes to enforce this amendment and, in specific, how violators will be treated. He suggested that the answers to these questions should be incorporated into the proposal.

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RESPONSE: This rule will, as amended, be enforced in a manner no different than for all other regulations affecting Board licensees. The need to comply will be made known to licensees by means of a notice sent from the Board office. Alleged violations will be given due consideration on receipt of justified complaints and, if violations are found to have occurred, the Board may impose penalties under the Uniform Enforcement Act (UEA), N.J.S.A. 45:1-14 et seq. The Board does not consider it either necessary or appropriate to incorporate the provisions of the UEA into this or any other professional Board rules since to do so would defeat the purpose of a uniform rule.

Full text of the adoption follows:

13:31-1.9 Identification of licensees and permittees

(a) All vehicles utilized for the installation or repair of electrical equipment shall be visibly marked with the company name, the license number and the business permit number.

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

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF PHARMACY

Notice of Administrative Change Expiration Date State Board of Pharmacy Rules N.J.A.C. 13:39

Take notice that the Office of Administrative Law has discovered that the expiration date of July 18, 1999 for the readopted Board of Pharmacy rules, N.J.A.C. 13:39, published at 26 N.J.R. 2905(b), is in error. The correct expiration date is June 16, 1999, being, pursuant to Executive Order No. 66(1978), five years after the effective date of the readoption. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF PHARMACY

Sterile Admixture Services in Retail Pharmacies

Adopted New Rules: N.J.A.C. 13:39-11
Adopted Amendment: N.J.A.C. 13:39-10.2
Adopted Recodification: N.J.A.C. 13:39-11 as 13:39-12

Proposed: March 21, 1994 at 26 N.J.R. 1303(a).

Adopted: August 22, 1994 by the Board of Pharmacy, Sophie Heymann, President.

Filed: August 22, 1994 as R.1994 d.476, **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. 45:14-26.2.

Effective Date: September 19, 1994.

Expiration Date: June 16, 1999.

The Board of Pharmacy afforded all interested parties an opportunity to comment on the proposed new rule and amendment, N.J.A.C. 13:35-11 and 10.2, regarding sterile admixture services in retail pharmacies.

A notice of proposal appeared in the New Jersey Register on March 21, 1994 at 26 N.J.R. 1303(a), and copies of the published proposal were forwarded to the Star Ledger, the Trenton Times and other interested parties.

The official comment period ended on April 20, 1994. At its May 11, 1994 meeting, the Board considered the request of the New Jersey Pharmaceutical Association (NJPHA) to extend the comment period. In lieu of formally extending the comment period, the Board agreed to defer its discussion of the proposed amendment and new rules until the next scheduled Board meeting (May 25, 1994) and to consider all written submissions received prior to that date.

A full record of this opportunity to be heard can be inspected by contacting the Board of Pharmacy, Post Office Box 45013, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the official 30 day comment period that ended on April 20, 1994, the Board received written comments from the following individuals:

1. Calvin H. Knowlton, MDiv, PhD, RPh, Amherst Pharmacy & Health Education Center
2. Louis J. Lupo, R.Ph., Total Care (Home Health Systems, Inc.)
3. Arthur L. Taub, Pharmacist, Director of Member Services
4. David M. Miller, Millers of Wyckoff.

During the extended comment period which ended on May 25, 1994, the Board received comments from the following:

1. Arthur L. Taub, Director of Member Services, New Jersey Pharmaceutical Association (NJPhA)
2. Robin J. Richardson, Executive Director, National Home Infusion Association (NHIA), commenting on behalf of several of its New Jersey members.

Following is a summary of the comments received and the Board's responses:

Summary Statement

COMMENT: NJPhA asked how many permit applications the Board has received and what suppliers and types of operations were involved in the complaints (IV only or independent practitioner).

RESPONSE: Approximately 75 to 100 permits have been issued. Information relative to the complaints referred to in the Summary statement is not yet public record as these complaints have not been finally resolved. The Board can advise, however, that the impetus for these regulations was complaints of contamination, including, but not limited to, complaints against suppliers within this State.

COMMENT: NJPhA and NHIA stated that excluding institutional pharmacies from compliance with these new regulations is discriminatory and assumes a different standard for each practice setting.

RESPONSE: As stated in the Summary statement, the Board determined that, for consumer protection purposes, existing sterile admixture regulations should be updated as quickly as possible. The Board decided to propose the new regulations in two parts in order to expedite implementation and to enable the Board to consider information unique to each setting. Consideration of all available information does not assume, nor does the Board intend to propose, a different standard for institutional settings. Pending final implementation of regulations concerning the latter institutional pharmacies remain subject to subchapter 10 requirements as well as other existing State and Federal law.

COMMENT: One commenter stated that the consultants used in developing this proposal specifically excluded independent providers and therefore the proposal is inherently biased.

RESPONSE: The consultants were not called upon as representatives of specific types of permit holders but rather were called upon because of their singular knowledge and background in the sterile admixture field.

COMMENT: The most consistent concern raised by all of the commenters related to the structural requirements for the controlled environment. NHIA stated that a clean room of the type being prescribed is a desirable standard to encourage but it is unreasonable and unnecessary to require it. Similarly, NJPhA stated that while minimum equipment and quality assurance and control requirements are welcome, the size requirements are arbitrary and undocumented and make no economic sense for the smaller provider.

RESPONSE: Based upon the concerns raised by these commenters as well as on information and documentation presented at the Board meeting, the Board will reduce the size requirement for the clean room from 150 square feet to 100 square feet.

COMMENT: Commenters stated opposition to the structural requirements on the basis that sterile technique, not structure, reduces negative outcomes.

RESPONSE: While proper technique certainly plays a major part in reducing negative outcomes, the structure of the controlled environment plays an important role as well in minimizing the risk of contamination by ensuring sufficient space for aseptic compounding, handling and storage. As stated above, the Board has reduced the minimum clean room dimensions from 150 square feet to 100 square feet in order to minimize the impact of these new rules on small pharmacies.

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COMMENT: Reference to the impact of the proposal upon the eight full-service retail pharmacies is particularly onerous.

RESPONSE: Reference to the number of pharmacies estimated to be affected by the proposal was made in order to comply with the Administrative Procedure Act. N.J.S.A. 52:14B-19 states that "In proposing a rule for adoption, the agency involved shall issue ... an analysis [which] shall contain: (a) A description of the types and an estimate of the number of small businesses to which the proposed rule will apply. . . ."

COMMENT: Retail pharmacies will be unable to continue offering sterile admixture services because of the prohibitive cost of compliance as well as limited space and/or services. Thus, nurses would revert back to admixing in the ambient air of their stations at the nursing home.

RESPONSE: The Board does not view the scenario outlined by the commenter as likely. As stated, the Board has reduced the minimum spatial requirements in response to the concerns of retail pharmacists. In addition, the new rules permit current permit holders a generous amount of time within which to come into compliance with the revised requirements.

COMMENT: Two commenters suggested that a "hidden agenda" exists with regard to this proposal. One of these commenters argued that the spatial requirements were proposed by larger companies to injure their smaller competitors.

RESPONSE: These proposed new rules were initiated by the Board of Pharmacy based upon documented complaints implicating some IV suppliers—both large and small companies—in negative outcomes with regard to the provision of sterile products. As stated in the Summary statement, the Board was especially concerned about these complaints because it has witnessed a rapid growth in home IV therapy combined with a steady increase in commercial enterprises seeking pharmacy permits to operate solely as sterile admixture services. The regulations were developed with a view toward ensuring greater accountability in the compounding of sterile products for both home and hospital use.

COMMENT: Joint Commission accreditation should be required as the standard for participation in the practice of preparing sterile products. The commenter pointed out that JCAHO requires a class 100 environment within the hood but does not prescribe the character of the actual clean room other than stating "Areas for the preparation of sterile products are functionally separate [from non-sterile areas] and are constructed to minimize opportunities for particulate and microbial contamination."

RESPONSE: In addition to relying upon the advice of consultants in developing these regulations, the Board incorporated—when reasonably possible to do so—standards developed by JCAHO, the FDA and NABP. For the reasons set forth above, the Board believes these explicit standards are both reasonable and necessary to protect the public health, safety and welfare.

N.J.A.C. 13:39-11.2 Training requirements

COMMENT: NJPhA stated it applauded the setting of minimum training standards. Another commenter, Louis J. Lupo, stated that the proposal does not define academic or practical training required. Mr. Lupo asked whether a certain number of years of experience in hospital pharmacy sterile admixture services is required to work in a retail pharmacy. The commenter also pointed out that continuing education in this area is very limited because laminar flow hoods are needed to demonstrate technique.

RESPONSE: Experience requirements in this relatively new area continue to be determined on a case-by-case basis. However, the Board agrees that more specificity with regard to training requirements is necessary. In recently proposed new rules relating to pharmacy technicians (see 26 N.J.R. 2743(a)), the Board has identified specific in-house training requirements and anticipates that additional educational programs may become available once these regulations are in place.

COMMENT: NHIA stated that typical media-fill procedures for validation are very costly and asked for clarification that this rule does not require a specific method or type of batch growth media but allows for provider flexibility in determining the validation process.

RESPONSE: The commenter is correct that the supplier has the flexibility to determine which validation process to use.

N.J.A.C. 13:39-11.3 Supportive personnel; required supervision

COMMENT: NJPhA asked how the Board determined the supervision ratio of two supportive personnel to one supervisor. NHIA asked whether the two-to-one limitation exists in other practice settings, that is, mail-order, institutional, etc.

RESPONSE: Long-standing Board regulations, N.J.A.C. 13:39-6.7(c) and 9.22, establish the two-to-one ratio for both retail and institutional settings.

N.J.A.C. 13:39-11.4 Tracking document

COMMENT: Louis J. Lupo made suggestions for streamlining the tracking process to a single document to be initialed after the process is completed.

RESPONSE: The Board believes that initialing each step in the process is an essential quality control requirement. In any event, N.J.S.A. 45:14-13 requires immediate personal supervision of unlicensed employees.

N.J.A.C. 13:39-11.6(a) and (b) Expiration date of sterile preparation

COMMENT: Pointing out that approximately 90 percent of sterile products dispensed by home infusion providers for home use are not used within 24 hours, NHIA asked what is necessary to document an expiration date that extends beyond 24 hours or the manufacturer's expiration date. The commenter stated that CDC cites six days from date of preparation as to when a sterile product moves from low to high risk and that in many instances manufacturers expiration dates do not exist because the products were compounded or developed for immediate institutional use.

RESPONSE: The "beyond use" date is supplied in the literature that is readily available concerning each substance; it would be impractical for the Board to include in the regulation expiration dates for all substances.

N.J.A.C. 13:39-11.7 Handling, packing and delivery

COMMENT: NJPhA stated that a pharmacy should be permitted to contract for delivery services.

RESPONSE: Nothing in this rule precludes a pharmacy from contracting for delivery services. It must be remembered, however, that the pharmacy is ultimately responsible for the product's sterility.

N.J.A.C. 13:39-11.9 Quality assurance program

COMMENT: A commenter stated that it is impossible and impractical to analytically test every type of product admixed by the pharmacy. The commenter is unaware of commercially available products for doing many of these tests.

RESPONSE: The rule requires the pharmacy to have in place a method for ensuring the ultimate sterility of all admixed products; that method need not be analytical testing of every type of product.

COMMENT: The same commenter stated that the cost of monthly air and surface sampling and monthly certification of the clean room and hoods is prohibitive.

RESPONSE: The Board believes that monthly air and surface sampling is both reasonable and necessary. Neither CDC nor this rule requires monthly clean room certification.

COMMENT: NJPhA argued that non-compounded commercially available injectable drug products should not be subject to such stringent regulation. The commenter asked whether the physician's access to such products is now limited to outlets licensed as aseptic. NHIA believes this section will impose unreasonable and onerous requirements on providers who dispense drug products such as insulin, vitamin B-12 and biotech products.

RESPONSE: These regulations provide guidelines related specifically to manipulated or admixed products and are applicable only to services over which the Board has jurisdiction. A physician is not precluded from obtaining commercially available, non-compounded products from other sources such as drug wholesalers and manufacturers.

COMMENT: One commenter stated that, because some suppliers offer limited admixture services, the standards should be specific to the type of preparation. Another commenter suggested utilizing the risk level method proposed by the USP and the ASHP.

RESPONSE: In developing these regulations the Board did, in fact, consider proposing standards based upon risk levels. However, it determined that this alternative would be too cumbersome in terms of enforcement and that the standards proposed are the minimum necessary for the continued protection of the public.

N.J.A.C. 13:39-11.15 Clean Room

COMMENT: Louis J. Lupo suggested that the sink should be in the clean room with the eyewash station, rather than the anteroom, stating that routine hand washing is important in daily clean room activity.

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NJPhA voiced a similar concern. Another commenter suggested that a refrigerator to be used only for injectables should be permitted in the clean room.

RESPONSE: Based upon its research in developing this regulation, the Board believes that permitting a sink in the clean room would be detrimental to overall product sterility. A refrigerator in the clean room is not permitted because refrigerators throw dirt and create static electricity.

COMMENT: If Class 100 laminar flow hoods are required, does the room also need to meet Class 100 specifications?

RESPONSE: Laminar flow hoods are not required for normal activity if the room meets Class 100 specifications. The Board will amend this section for clarification upon adoption.

Summary of Changes Upon Adoption:

1. Deletion of the reference to permit holders in N.J.A.C. 13:39-10.2 and 11.1 is intended to clarify and to emphasize that this chapter is applicable in all instances of compounding and dispensing of sterile admixture products under the retail permit, whether limited or full service. In any event, a Board retail permit is required for all such compounding and dispensing.

2. In proposing N.J.A.C. 13:39-11.4, the Board intended to require that tracking documents be kept separately for enforcement purposes. Based upon comments made by the Board's enforcement officers at the May 25, 1994 Board meeting, the Board determined that the cross-reference to N.J.A.C. 13:39-5.6 was incorrect because keeping the tracking document in the general prescription file would not accomplish the Board's intent. Accordingly, this provision will be amended upon adoption to delete reference to the prescription file.

3. N.J.A.C. 13:39-11.5 and 11.12 have been clarified at the request of the Board's enforcement officers in order to provide further guidance to both the enforcement officers and to licensees concerning the required warning label and controlled environment construction. N.J.A.C. 13:39-11.5(a)12 was revised to clarify that the specified warning must be consistent with Federal and State law. N.J.A.C. 13:39-11.12(c) was amended to add sealing as a ceiling-wall juncture alternative, to avoid cracks and crevices.

4. Based upon public comment and additional documentation provided to the Board by a commenter, the Board is amending N.J.A.C. 13:39-11.15(b) in order to decrease the required clean room size from 150 to 100 square feet. Subsection (d) is being amended for clarification only.

5. A typographical error in N.J.A.C. 13:39-11.9(b)7 and 11.15(d) is being amended upon adoption. Based upon its research, the Board originally determined that the industry standard for a clean room is Class 1,000; reference to Class 100 (which is not known to exist) was merely a typographical error.

6. In order to group rules concerning sterile admixture services together, the Board is recodifying the current subchapter 11, Nuclear Pharmacies, as subchapter 12.

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

13:39-10.2 Compliance

(a) An institutional pharmacy which *[holds a permit to]* compound***s*** and dispense***s*** sterile admixture medications, parenteral nutrition and/or parenteral drug therapy shall meet the requirements of this subchapter.

(b) A retail pharmacy which, on or prior to *[(insert effective date of new N.J.A.C. 13:39-11)]* ***September 19, 1994***, *[held a permit to]* compound***ed*** and dispense***d*** sterile admixture medications, parenteral nutrition and/or parenteral drug therapy shall meet the requirements of this subchapter.

(c) A retail pharmacy which, on or prior to *[(insert effective date of new N.J.A.C. 13:39-11) holds a permit to]* ***September 19, 1994*** compound***s*** and dispense***s*** sterile admixture medications, parenteral nutrition and/or parenteral drug therapy shall meet the requirements of N.J.A.C. 13:39-11.

SUBCHAPTER 11. STERILE ADMIXTURE SERVICES IN RETAIL PHARMACIES

13:39-11.1 Purpose and scope

This subchapter shall apply to all retail pharmacies which *[obtain a permit]*, on or after *[(insert effective date of subchapter), to]* ***September 19, 1994***, compound and dispense sterile admixture products, parenteral nutrition and/or parenteral drug therapy.

13:39-11.2 Training requirements

(a) The pharmacist in charge and the dispensing pharmacist shall have practical or academic training in sterile product compounding, clean room technology, laminar flow technology, and quality assurance techniques and shall be required to document such training if required by the Board.

(b) The pharmacist in charge shall be responsible for ensuring that, prior to performing delegated sterile admixture services, all supportive personnel are trained and can successfully demonstrate:

1. Comprehensive knowledge of the pharmacy's standard operating procedures with regard to sterile admixture services as set forth in the policy and procedure manual required to be maintained pursuant to N.J.A.C. 13:39-11.8;

2. Familiarity with the necessary compounding techniques; and

3. Appropriate aseptic technique, which shall be proven by means of a test batch of growth-media.

(c) At least every six months, the pharmacist-in-charge shall test the aseptic technique of supportive personnel by means of a test batch of growth-media. Test results shall be recorded in a log which shall be available for the Board's inspection.

13:39-11.3 Supportive personnel; required supervision

(a) The dispensing pharmacist shall provide direct supervision to supportive personnel who are working within the controlled environment, as defined in N.J.A.C. 13:39-11.11. The dispensing pharmacist shall supervise, at any given time, no more than two supportive personnel performing delegated sterile admixture tasks.

1. For the purposes of this subchapter, "direct supervision" means that the dispensing pharmacist shall be present in the dispensing area whenever supportive personnel are compounding sterile admixture products, and shall conduct in-process and final checks of all steps in preparation, compounding and dispensing of sterile admixture products.

2. Supervision shall include, but is not limited to, the checking of each ingredient used, the quantity of each ingredient whether weighed, measured or counted, and the finished label.

(b) The dispensing pharmacist may delegate to supportive personnel only the tasks set forth below in (c)2 (recording of the prescription, (c)3 (selection of the drugs, container and diluent), and (c)4 (compounding of sterile admixture) below. The dispensing pharmacist shall check that each task has been performed correctly prior to any further task being performed in the dispensing process.

13:39-11.4 Tracking document

(a) The pharmacist-in-charge and the dispensing pharmacist shall ensure that the sterile admixture product has been properly prepared, labeled, controlled, stored, dispensed and distributed in accordance with the provisions of this subchapter.

(b) The dispensing pharmacist shall prepare a document to track completion of the following steps of the compounding process. The tracking document(s) shall be initialed by the individual(s) who completed each step:

1. Receipt of prescription;

2. Recording of prescription in the patient record profile system, pursuant to N.J.A.C. 13:39-11.10;

3. Correct selection of the drugs, container, and diluent prior to their being compounded in the clean room;

4. Verification that all sterile admixture compounding is performed within the clean room and that proper aseptic procedures are being used at all times to prevent bacterial contamination of this product;

5. Verification that residual components comply with the order;

6. Verification that the prescription label complies with the requirements of N.J.A.C. 13:39-11.5; and

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7. Verification that the prescription order is complete and ready to be dispensed, including any necessary ancillary supplies.

(c) The completed tracking document(s) shall be kept in a separate *[prescription]* file *[pursuant to the provisions of N.J.A.C. 13:39-5.6]*.

13:39-11.5 Information required to appear on prescription label

(a) The dispensed container for any sterile admixture product shall bear a permanently affixed label with at least the following information:

1. The date prepared;
2. The name of the physician;
3. The name of the patient;
4. Directions for use;
5. The name of the basic solution;
6. The name and amount of drug(s) added;
7. The name or identifying code of the pharmacist who checked or prepared the sterile admixture product;
8. The name, address, and telephone number of the pharmacy;
9. The pharmacy's Drug Enforcement Administration (DEA) number, should the sterile admixture product contain any controlled dangerous substances;
10. The expiration date of the sterile admixture product;
11. Any ancillary and cautionary instructions as needed;
12. As pertinent, a warning ***consistent with applicable Federal and State law*** that cytotoxic products are bio-hazardous; and
13. As pertinent, the requirements for proper storage.

13:39-11.6 Expiration date of sterile preparation

(a) The expiration date of a sterile admixture product shall be 24 hours or as otherwise stated by the manufacturer.

(b) Any expiration date that extends beyond 24 hours or the manufacturer's expiration date shall be substantiated by documentation satisfactory to the Board.

13:39-11.7 Handling, packing and delivery

(a) To ensure the integrity and efficacy of compounded sterile admixture products, the pharmacist in charge shall ensure that:

1. A reasonable effort is made to provide tamper-evident packing;
2. Delivery is made from the pharmacy to the patient within a reasonable time; and
3. Proper in-transit storage is provided consistent with product labeling.

13:39-11.8 Policy and procedure manual

(a) The pharmacist in charge shall maintain a policy and procedure manual which shall set forth in detail the licensee's standard operating procedures with regard to sterile admixture services.

(b) The policy and procedure manual shall include at least the following:

1. A risk-management program (including, but not limited to, incident reports, adverse drug reactions, and product contamination);
2. Security measures (ensuring that the premises where sterile admixture drugs are present are secured, so as to prevent access by unauthorized personnel);
3. Equipment;
4. Sanitation;
5. Reference materials;
6. Drug storage;
7. Drug dispensing;
8. Drug labeling;
9. Drug destruction and returns;
10. Delivery of drugs;
11. Patient recordkeeping;
12. Investigational new drugs; and
13. A quality assurance program.

(c) The pharmacist in charge shall review and, if necessary, amend the policy and procedure manual on at least an annual basis. Documentation of the annual review shall be made available to the Board upon request.

13:39-11.9 Quality assurance program

(a) This section shall apply both to commercially available injectable drug products that are dispensed to patients without compounding or other manipulation, and to sterile admixture products that prior to dispensing have been in any way repackaged, reconstituted, diluted, admixed, blended, or otherwise manipulated (collectively referred to as "compounded").

(b) The dispensing pharmacist shall ensure that the sterile admixture product retains its quality attributes within acceptable limits through a written quality assurance program. The quality assurance program shall require at least that:

1. The sterile admixture product is kept under appropriate controlled conditions at the location of use, and is administered through adequate labeling and verbal or written instructions;
2. The potency, pH, sterility, freedom from pyrogen, particulate limits, container integrity, appearance, and other qualities or characteristics that the sterile admixture product is expected to have do exist for the entire labeled life of the sterile admixture product, or until the sterile admixture product is manipulated by the patient or caregiver;
3. The quality assurance program encompasses every sterile admixture product under the pharmacy's control and includes all phases of its preparation, distribution, storage, administration, and directions for use;
4. The proper analytical testing is performed at regular intervals of time in order to verify the microbiological, chemical, and physical quality of all sterile admixture products;
5. Air and surface sampling takes place monthly;
6. Laminar air flow hoods are certified semi-annually;
7. The Class *[100]* ***1,000*** Clean Room is certified semi-annually; and
8. All unused drugs and materials used in the preparation of sterile admixture products, including antineoplastic agents, are disposed of properly in accordance with accepted professional standards and applicable laws, including the Medical Waste Act (N.J.S.A. 13:1E-48.1 et seq., P.L. 1989, c.34).

13:39-11.10 Patient profile records

(a) The pharmacist in charge shall ensure that a patient profile record is maintained and monitored for each patient. The patient profile record shall include, but is not limited to, the following:

1. Available medical information consistent with N.J.A.C. 13:39-7.14;
2. A complete record of the formulations of the sterile admixture products dispensed; and
3. Initial and ongoing clinical pharmacy monitoring plans.

(b) A reasonable, documented attempt shall be made to ensure that a patient profile record includes over-the-counter and home remedies.

13:39-11.11 Controlled environment: entry

(a) The pharmacy shall have designated areas, namely a clean room and an anteroom, which shall collectively be known as the controlled environment.

(b) The controlled environment shall be:

1. Accessible only to designated personnel;
2. Used only for the preparation of parenteral products, or such other tasks that require a controlled environment; and
3. Structurally isolated from other areas within the pharmacy by means of restricted entry or access.

13:39-11.12 Controlled environment: construction

(a) The surfaces of ceilings, walls, floors, fixtures, shelving, counters, and cabinets in the controlled environment shall be smooth, impervious, free from cracks and crevices, and nonshedding, thereby minimizing spaces in which microorganisms and other contaminants may accumulate.

(b) All surfaces shall be resistant to sanitizing agents.

(c) Junctures of ceilings to walls shall be covered***,*** *[or]* caulked ***or sealed*** to avoid cracks and crevices where dirt can accumulate.

(d) Ceilings that consist of inlaid panels shall be impregnated with a polymer to render them impervious and hydrophobic, and shall

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also be caulked around each perimeter to seal them to the support frame.

(e) Walls shall consist either of panels locked together and sealed, or of epoxy-coated gypsum board.

(f) Floors shall have vinyl floor covering and shall be seamless or have heat-welded seams and coving to the sidewall.

(g) Dust-collection overhangs (such as ceiling utility pipes) or ledges (such as window sills) shall be either avoided or sealed.

(h) Ceiling lighting fixtures shall have exterior lens surfaces that are smooth, mounted flush, and *[sealed]* ***air tight***.

(i) Ceilings and walls shall have every penetration sealed.

13:39-11.13 Controlled environment: stocking

(a) The controlled environment shall contain only the following:

1. Items such as furniture, equipment, supplies, and other goods that are required for the tasks to be performed there;

2. Items that are nonpermeable, nonshedding, and resistant to disinfectants; and

3. Items that have been cleaned and sanitized just prior to their being enclosed.

(b) Whenever possible, equipment and other items used in the controlled environment should not be taken from these rooms except for calibration, servicing, or other activity associated with the proper maintenance of the item.

13:39-11.14 Controlled environment: maintenance and supplies

(a) The controlled environment shall be kept clean and arranged in an orderly fashion. All required equipment shall be maintained in good operating condition.

(b) The controlled environment shall not be used for bulk storage, warehousing, or clerical and secretarial functions.

(c) The controlled environment area shall contain the following supplies:

1. Gloves, masks, gowns, and other personal protective equipment;

2. Needles and syringes of various sizes;

3. Disinfectant cleaning agents;

4. Clean towels;

5. Hand-washing materials, including antimicrobial skin cleaner; and

6. Any and all supplies necessary for the aseptic preparation of sterile admixture products.

13:39-11.15 Clean room

(a) The clean room shall contain no sinks or floor drains.

(b) Work surfaces shall be constructed of smooth, impervious materials, such as stainless steel or molded plastic, so that the work surfaces may be readily cleaned and sanitized.

(c) The clean room shall be a minimum of *[150]* ***100*** square feet in size and shall be compatible with the volume of compounding being conducted.

(d) Appropriate environmental control devices ***capable of maintaining Class 1,000 conditions during normal activity*** shall be in place, such as laminar airflow hoods *[and]* ***or*** the zonal laminar flow of high efficiency particulate air (HEPA) filtered air*[, which shall be capable of maintaining Class 100 conditions during normal activity]*.

(e) The clean room shall contain the following equipment:

1. A laminar airflow hood or suitable HEPA filter system;

2. For the compounding and dispensing of antineoplastic agents, sufficient additional space to accommodate a vertical air laminar flow hood;

3. Waste containers in compliance with Occupational Safety and Health Administration (OSHA) standards for used needles and syringes, and for chemotherapy waste; and

4. Ancillary supplies required for proper compounding.

13:39-11.16 Anteroom

(a) The environmental quality within the anteroom shall be better in terms of demonstrated particle count or positive room pressurization than that of adjacent areas, such as the main pharmacy, so as to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the clean room.

(b) The anteroom shall contain the following equipment:

1. A sink with hot and cold running water;

2. Label and packaging equipment and supplies;

3. Waste containers for all personal protective equipment;

4. An eyewash station; and

5. A hazardous waste spill kit.

(c) A refrigerator, as required by USP Standards, shall be reasonably accessible to the anteroom to ensure the integrity of the sterile admixture product, but shall not be located within the controlled environment.

(d) In addition to the minimum reference library mandated in N.J.A.C. 13:39-7.7, each sterile admixture service shall also contain the most current edition of the American Hospital Formulary Service and other reference materials pertinent to this specialized service.

SUBCHAPTER *[11.]***12.*** NUCLEAR PHARMACIES

Recodify existing N.J.A.C. 13:39-11.1 through 11.5 as ***12.1 through 12.5*** (No change in text.)

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION
Charitable Fund Raising
Adopted Repeal and New Rules: N.J.A.C. 13:48

Proposed: July 5, 1994 at 26 N.J.R. 2746(a).

Adopted: August 23, 1994 by Mark S. Herr, Assistant Attorney General in Charge.

Filed: August 29, 1994 as R.1994 d.494, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1994, c.16, Section 4b.

Effective Date: September 19, 1994.

Expiration Date: September 19, 1999.

The Division of Consumer affairs afforded interested parties an opportunity to comment on the proposed repeal and new rules relating to charitable registration and investigation. The official comment period ended on August 4, 1994. Announcement of the opportunity to respond to the Division appeared in the New Jersey Register on July 5, 1994 at 26 N.J.R. 2746(a). Announcements were also forwarded to the Center for Non-Profit Corporations, the American Association of Fund Raising Counsel, the National Society of Fund Raising Executives, the Philanthropic Advisory Service of the Council of Better Business Bureaus, the American Institute of Philanthrophy, the National Charities Information Bureau, Accountants for the Public Interest, the Central New Jersey Fund Raising Forum, many veterans', police, and firemen's associations, and to other organizations and interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Division of Consumer Affairs, P.O. Box 45021, Newark, N.J. 07101.

Summary of Public Comments and Agency Responses:

Prior to the formal proposal, Division staff met with New Jersey leaders in the charitable field in order to discuss tentative provisions. A preproposal draft was distributed to these participants. The draft elicited detailed and highly constructive comments, a number of which resulted in changes that were incorporated into the final Register proposal.

During the preproposal and the formal 30-day comment period, the Division of Consumer Affairs received 22 communications. The majority of adverse comments concerned the fee schedule. Others objected to details of the extension period process. In addition, several commenters indicated some confusion about definitions. The latter persons are referred to the statute, which contains basic definitions. The Division added further definitions only where they were needed in order to ensure the clarity of regulatory provisions. When the complete set of regulations is adopted, the Division will, as has been its practice in the past, make copies of both the Act and the regulations available to all registrants. Printed copies of the Act are already available to the public and may be obtained by contacting the Division of Consumer Affairs.

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Comments were received from the following:

The Center for Non-Profit Corporations, by Linda M. Czipo, Director of Communications and Advocacy Services

UJB Financial Corporation, by Richard E. Pryor II, Vice President and Assistant Counsel

The National Chapter of Fund Raising Executives, New Jersey Chapter, by Margaret J. McLean, CFRE, President

The Burlington County Girl Scout Council, by Marion Duchesne, Executive Director

The American Legion, Department of New Jersey, by George W. Diem, State Commander

The American Association of Fund-Raising Counsel, by Helmer N. Ekstrom, President

The Military Order of the Purple Heart, by James Brian Appleton, Public Strategies/Impact, Trenton, N.J.

American Ex-Prisoners of War, Inc., Garden State Chapter No. 1, by Milton W. Stern, State Commander

The Allied Council of New Jersey Veterans Associations, by Robert H. Marx, Chairman

The State of New Jersey Veterans Services Council, by David J. Hulsey, Chairman

The Philanthropic Advisory Service of the Council of Better Business Bureaus, Inc., by Bennett H. Weiner, Vice President

The Delaware-Raritan Girl Scout Council, by Carolyn McCallum, President

The New Jersey State Firemen's Mutual Benevolent Association, by Charles K. Steinel, President

New Jersey Girl Scout Councils, by Marion L. Duchesne, Chairperson, legislative monitoring committee

John Franklin Hartman, Consultant, Plainfield, New Jersey

Martin L. Bearg, Esq., Livingston, New Jerey

A summary of the comments received, together with the Division's responses, follows:

General

COMMENT: We understand that the timelines established in the legislation have necessitated publishing the regulations in several parts. However, it is extremely difficult to assess the full impact of the rules if they are proposed in sections rather than as a whole. We request that when the Division proposes the second series of regulations, both sets be re-opened for public comment to allow for more complete analysis of the rules and their impact, and to give the Division the chance to correct any unanticipated problems in the first set.

RESPONSE: While rulemaking procedures do not allow for a general "re-opening for public comment" of adopted regulations, amendments can be proposed to correct unanticipated problems or to resolve issues that arise. The Division urges affected parties to communicate their concerns at any time. The public may also propose changes by means of a Petition for Rulemaking, pursuant to N.J.S.A. 52:14B-4(f).

COMMENT: The phrase "small business" is used in the proposal to describe for-profit consultants and not-for-profit organizations. Clearly this will only add to the public confusion about the significant role the not-for-profit sector plays in our everyday lives.

RESPONSE: The term "small business" was used only in the prefatory statement, which does not appear in the final regulations, and only applies to for-profit organizations. A regulatory flexibility analysis, projecting the impact upon small businesses of any proposed rules, is mandated for all regulatory proposals by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The analysis stated that the rules would impact upon both profit and non-profit organizations, "some of which are incorporated and can be characterized as small businesses under the criteria set forth in the Regulatory Flexibility Act". This wording was intended to make clear that the analysis did not apply to all entities involved in charitable fund raising.

COMMENT: Nowhere in the regulations is there an attempt to define a fraudulent fund raising pratice. How will the Act and regulations protect the public and who will decide what is a fraudulent practice?

RESPONSE: The legislative purpose is enunciated in Section 2 of the Act, which states that it is essential that information concerning fund raising activities of charitable organizations, professional fund raisers, commercial co-venturers and solicitors be more readily available to the citizens by whose generosity funds are raised. The Legislature further declared that in order to accomplish that end, registration of charitable entities was necessary and the Attorney General needed the powers to obtain, and disseminate to the public, data concerning fund raising practices.

The entire Act is designed to protect the public from fraud and deceptive practices by making information regarding charitable organizations and their solicitations available to any person. The Act does enumerate some conduct which is considered fraudulent or deceptive in Section 15. This listing of unlawful practices is not exclusive and fraud can be determined on a case by case basis. Additional unlawful practices may be specified by regulation at a later date.

COMMENT: Most fraud comes from special events and sales promotions conducted by "commercial co-venturers," many of whom are not registered or who take advantage of the charity through promises of revenues that never materialize or are eaten up by "expenses" of running the event or promotion. Yet it is the fund raising counsel and independent paid fund raisers who must file reports, but not the commercial co-venturer. Section 12b of the Act requires the charity to file at the conclusion of a charitable sales promotion.

RESPONSE: The Legislature's decision was to place the burden of filing reports of charitable sales promotions upon the charity. The Act also mandates that the charitable organization exercise supervision over fund raising activities conducted for its benefit.

COMMENT: It is our understanding that a charitable organization currently registered with the State of New Jersey under the 1971 Act will be required to file a new registration form as required by the 1994 Act, but not until that organization would be required to file an "annual renewal statement" with the Division pursuant to the provisions of Section 6b of that Act. This should be included in the proposal.

RESPONSE: The commenter's understanding is correct: no charitable organization currently registered will be required to file a new registration. Six months after the close of an organization's current fiscal year, or later if the Division grants an extension of time, the filing of an annual renewal statement on new forms will be required. Section 19 of the Act provides the basis for this policy.

COMMENT: While not part of this specific proposal, we urge you to regularly inform charities about the requirements of the Act. An improved coordination of effort between the Division of Consumer Affairs and the Department of State, Division of Commercial Recording, to inform all non-profits about their potential responsibilities under the law, would significantly increase compliance.

RESPONSE: The Division agrees, and will make every effort to ensure that all potential registrants are made aware of the Act and its requirements.

N.J.A.C. 13:48-1.3 Definitions

COMMENT: The fund raising statute was expressly revised to separate fund raising counsel, independent paid fund raisers and solicitors. What is the purpose of including a definition of "professional fund raiser"? Since the use of the term has caused considerable confusion in the past among fund raisers, charities and the public, we ask that you consider deleting it in favor of the established terms.

RESPONSE: The term appears in the Act, without definition. A definition has therefore been added in the regulations. However, more specific terms are now substituted in the section of these regulations, N.J.A.C. 13:48-2.1(a), to which the commenter refers.

COMMENT: Several persons criticized the definition of "gross contributions." One commenter stated that the definition is not in keeping with the law because the term "includes a reference to amounts of funds received nationwide and does not delimit the regulations to funds contributed in New Jersey." Another commenter said "the Division's definition of 'gross contributions' might set a dangerous precedent," and gave the example of an organization in Pennsylvania which raised the bulk of its money in that state and a lesser sum in New Jersey. The organization would have to pay a registration fee to New Jersey based on total contributions rather than the small amount of New Jersey-generated funds, which seems inherently unfair. A third commenter charged that the definition, not included in the statute, goes beyond the intent of the legislation to regulate funds raised in New Jersey.

RESPONSE: Not only is there no geographical restriction in the statute as to the source of funds, but also, in the majority of states that regulate charitable organizations, "gross contributions" are calculated and defined in much the same way as in the Division's proposal. One of the goals in this State is to be consistent with other states, especially in regard to such basic issues as the definition of "gross contributions."

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N.J.A.C. 13:48-2 Fees

COMMENT: The charitable organizations and consultants (fund raising counsel and independent paid fund raisers) who are regulated by the Act support the principle that fraud and scams should be eliminated. To the extent the Act empowers the Attorney General to do this, the purpose of the Act is applauded, but the initial set of regulations only address the need for legitimate organizations and consultants to register and report. The regulations do not indicate, in any fashion, that the fees to be paid will be utilized by the Attorney General to investigate and weed out fraud.

RESPONSE: Section 23 of the Act states that all fees payable to the Attorney General and any civil penalties imposed by the Attorney General shall be forwarded to the State Treasurer and become part of the General Fund, and shall be available to the Attorney General on a non-lapsing basis to effectuate the purposes of the Act.

COMMENT: We urge the Division to consider an alternative fee structure to allow smaller charities within each existing category to pay a lower fee. We also note that, although the law specifies that the Division cannot impose fees in excess of what is needed to administer the Act, it will be difficult for any outside entity to assess compliance with this section. Since all charities filing the long form are required to furnish detailed financial information to the Division, we call upon the Division to make widely available an annual accounting of its use of all fees and fines generated under the Act.

RESPONSE: The fees set forth in the proposed schedule were determined by a study of the expenses the Division expects to face in order to efficiently enforce the statute. These expenses include substantial administrative and investigatory costs, as well as technical and personnel costs for the mandated "hot line," which will provide the public with information by telephone regarding specific charities. Pursuant to N.J.S.A. 52:14B-1 et seq., provision of an annual accounting of the Division's use of fee money is not required as part of the rulemaking process.

COMMENT: A commenter stated "We are confused about the Division's proposal to base registration fees on the most recently filed fiscal year rather than the most recently completed fiscal year. We understand that the Division is attempting to prevent underpayment of fees, but it would be easier to comply with procedures analogous to those used by the IRS, where the taxpayer pays based on the most recently completed tax year." Another commenter suggested, "If you wish to achieve uniformity in the receipt of the annual fee, then the payment of the fee based upon the 'immediately preceding fiscal year' of the organization would be more appropriate than basing it on the 'most recently filed fiscal year'."

RESPONSE: The wording follows statutory language in the Act, at Section 23(a) through (e).

COMMENT: A commenter noted in N.J.A.C. 13:48-2.1(a)2 and 3, the absence of an upper limit of contributions and a lower limit, respectively.

RESPONSE: The wording tracks the statute.

COMMENT: We are particularly concerned about the seemingly inflexible $25.00 fee for late filings. Imposition of such a fee is fundamentally unfair in certain instances, especially in the beginning stages of the law's implementation. Literally thousands of small groups that will be required to register for the first time are unaware of requirements under the Act. We request confirmation that the Division will retain the use of a warning under the new regulatory scheme, as it has done in the past. We also request that a waiver of the late fee be permitted for registrants that receive none of their revenues from contributions but rely instead on government grants or other non-donative sources of funding.

RESPONSE: The practice of sending a warning will be continued. However, given the fact that charitable organizations funded entirely by government grants or other non-donative sources do not have to pay a registration fee, the Division does not consider a late fee burdensome. It is based on the estimated administrative cost of reminding organizations to comply with the Act. The fee may be avoided, in any case, by timely action. It should be noted also that, pursuant to N.J.A.C. 13:48-2.1(c), the late fee is a primary but not exclusive remedy.

COMMENT: Since it is common for boards of trustees and officers to change frequently in small, volunteer organizations, we ask that the late fee be waived for good cause for organizations raising less than $25,000 in contributions and filing the short form. "Good cause" could include instances in which an officer, including but not limited to the financial officer, has been replaced during the past three months.

RESPONSE: Under Section 17 of the Act, which states that the common law powers of the Attorney General shall not be limited, impaired, or modified by the new statute, any reason may be deemed valid by the Attorney General as "good cause" for an extension of time. Wording has been added to indicate that the list of three situations that constitute good cause is not exclusive. However, the late fee will be applied across the board, to organizations of any size, unless an extension is granted.

COMMENT: Several commenters were troubled by contract filing fees. One person stated that he was not aware of any other state that levied such a fee. Another voiced concern that the definition of "contract" contained in the proposed regulations was too broad.

RESPONSE: Section 23(f) of the Act specifically authorizes contract filing fees. Analysis of other states' charitable fund raising rules shows that they charge similar fees but use different terminology. As for the definition of "contract," the Division will consider narrowing the definition in the next set of proposed regulations.

COMMENT: The same commenter questioned whether fees linked with activities in pursuit of raising contributions to support various causes might amount to placing a price tag on the exercise of free speech.

RESPONSE: All regulatory proposals are carefully reviewed by the Division of Law to avoid any infringement upon constitutional rights.

COMMENT: While the various contract filing fees and report filing fees do not seem excessive when considered individually, collectively they could impose a financial burden for certain groups. We understand that New Jersey is the only state imposing some of these fees, such as those for filing final reports for certain campaigns and sales promotions. Such a precedent, if followed by other jurisdictions, would prove especially harmful for groups that solicit in multiple states. Also, additional information regarding the Division's anticipated procedures would facilitate an assessment of whether a particular filing fee is appropriate or excessive.

RESPONSE: As previously stated, document-filing fees were determined according to personnel, equipment and overhead costs. The Division is entitled to rely on its expertise and experience in estimating the costs that will be incurred for the processing and review, including legal and accounting scrutiny, of these documents. Fees will be evaluated from time to time to insure that they are correctly calculated to meet expenses, without surplus.

COMMENT: The fee imposed on fund raising counsel is a flat fee, regardless of size. While a single practitioner may in fact have sufficient revenues to pay the fee, many do not, especially if they must register in several states. Consideration should be given to a scaled fee based upon revenue. The size of the entity or individual's firm is not a controlling factor. The difference can be theoretically justified on (i) the ability to pay and (ii) the fact that most firms that have significantly more revenue have significantly more activity and are therefore more difficult to investigate and regulate.

RESPONSE: The fee is based upon the Division's estimate of administrative costs and not on ability to pay or scope of activity of a for-profit business.

COMMENT: The $250.00 registration fee for fund raising counsel is high, especially as there are additional fees for other filings. Many states have lower registration fees for "counsel" than they do for "solicitors."

RESPONSE: The commenter appears to be referring to "independent paid fund raisers" rather than the solicitors employed by them. The fee in question comports with New Jersey's desire to be consistent with other states, 14 of which charge the same sum for both categories of registrant. As to the amount of the fund raising counsel's fee, neighboring states that regulate charities charge fees of $250.00 or higher.

COMMENT: A $25.00 fee per telephone caller is excessive, particularly inasmuch as many of the telephone solicitors are not only temporary, but extremely temporary. We suggest that the solicitor's registration be limited to a statement only of the name, address and telephone number of the solicitor, to be submitted by the independent paid fund raiser. Also, if the professional fund raiser could file the registrations for the telephone solicitors on a quarterly basis (or not more often than once every 30 days at a fixed date), regardless of when the solicitor is employed or unemployed, it would be helpful.

RESPONSE: Upon reconsideration of the number of solicitors likely to be registered, the Division is reducing the solicitor fee, for the present, to $15.00. All other matters regarding solicitors' filings will be covered in the second group of regulations, to be proposed shortly. At that time, the Division will consider this and other suggestions for efficient filing procedures.

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N.J.A.C. 13:48-3 General Requirements

COMMENT: The proposal should set the filing fees required for the filing of the annual financial report by long-form registrants, as well as the time period in which such report must be filed.

RESPONSE: These details regarding filing fees appear in N.J.A.C. 13:48-2.1(a)3, 4 and 5. The time for filing an annual report is specified in Section 6b of the Act and N.J.A.C. 13:48-3.1(a). Both sections state that the annual filing of the renewal statement and financial report is due no later than six months after the close of an organization's fiscal year, unless the organization has been granted an extension of time, as set forth in N.J.A.C. 13:48-3.1(b). The graduated annual registration fees constitute the filing fees for the renewal statement and financial report, or the extension request. No additional amounts are required, unless the filing is late and no extension of time has been granted, in which case a late fee of $25.00 is incurred.

COMMENT: Since most non-profits run on a July 1 to June 30 fiscal year, and they are made up, unless national organizations, of unpaid volunteers, requiring reporting within 30 days of the end of their fiscal year is quite a burden.

RESPONSE: This comment is incorrect as to the initial time allowed for annual reporting. As noted in the previous response, the renewal statement and financial report are to be filed no later than six months after the close of the organization's fiscal year, not 30 days. The 30-day period tolls after the six-month deadline and is, in effect, a grace period. If upon expiration of the 30 days the renewal statement and financial report have still not been filed, a late fee will be incurred.

COMMENT: Ours is an organization of wartime veterans which was incorporated by an act of Congress. In view of that status, we request an exemption from any requirement to file an annual report.

RESPONSE: The Division cannot contravene the statute. Section 8.a(4) specifically requires veterans' organizations, including those chartered under Federal law, to file a short form registration. Pursuant to Section 6b, all charitable organizations must file a renewal statement.

Summary of Changes Upon Adoption

1. In N.J.A.C. 13:48-2.1(a), the words "professional fund raisers" have been deleted and the words "fund raising counsel, independent paid fund raisers," substituted for greater specificity.

2. The number of potential solicitor-registrants and ensuing costs have been reevaluated, resulting in a reduction from $25.00 to $15.00 in the registration fee for solicitors, N.J.A.C. 13:48-2.1(a)8.

3. Wording has been added in N.J.A.C. 13:48-3.1(b) to clarify that the three circumstances listed as constituting "good cause" are not exclusive.

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]*):

CHAPTER 48
CHARITABLE FUND RAISING

SUBCHAPTER 1. GENERAL PROVISIONS

13:48-1.1 Director

(a) The Director of the Division of Consumer Affairs shall be the person charged with the administration and enforcement of the Charitable Registration and Investigation Act, P.L. 1994, c.16.

13:48-1.2 Applicability

(a) These rules shall govern the registration and charitable fund raising activities of charitable organizations, federated fund raising organizations, professional fund raisers, solicitors, and commercial co-venturers, pursuant to the Charitable Registration and Investigation Act of 1994.

(b) These rules shall apply to any person engaging within this State in any of the activities regulated by the Act, including persons whose principal place of business is located outside this State.

(c) Upon initial request by a potential registrant, or as the result of independent information received by the Attorney General, a determination form, to determine the applicability of the Act, will be supplied. There is no fee for this form, which may be requested by telephone, facsimile, or letter sent to the address set forth in N.J.A.C. 13:48-1.4.

13:48-1.3 Definitions

(a) Where words or terms used in this chapter have been defined in P.L. 1994, c.16, Section 3, the statutory definitions shall be deemed to apply unless defined differently within these regulations. The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the Charitable Registration and Investigation Act of 1994, P.L. 1994, c.16.

"Attorney General" means the Attorney General of the State of New Jersey or, as applicable, the Attorney General's designee, the Director of the Division of Consumer Affairs.

"Campaign" means an operation or plan organized to solicit a contribution to further a charitable organization's stated or implied purpose.

"Division" means the Division of Consumer Affairs within the Department of Law and Public Safety.

"Event" means a planned happening, occurrence, activity or social occasion.

"Government grant" means:

1. Any amounts received from a governmental unit, including donations or contributions and amounts received in connection with a contract entered into with a governmental unit for the performance of services or in connection with a government research grant;

2. Tax revenues levied for the organization's benefit and either paid to or expended on its behalf;

3. The value of services or facilities furnished by a governmental unit to the organization without charge.

"Gross contributions" means the total amount of contributions received nationwide by a charitable organization, before any deductions for expenses of collection or overhead or for anyone's services, such as the services provided by fund raising counsel or independent paid fund raisers.

"Gross receipts" means the total amount, without deductions, of cash or other assets received, including, but not limited to, all contributions.

"Professional fund raisers" means both independent paid fund raisers and fund raising counsel.

13:48-1.4 Address for all matters related to registration

All matters related to registration should be communicated to:

Division of Consumer Affairs
Regulated Business Section
P.O. Box 45021
Newark, N.J. 07101
Tel: (201) 504-6262
FAX: (201) 648-2807

SUBCHAPTER 2. FEES

13:48-2.1 Fee schedule

(a) The fees charged by the Division of Consumer Affairs for registration of charitable organizations (which shall be read to include, for the purposes of this subchapter, federated fund raising organizations), *[professional fund raisers]* ***fund raising counsel, independent paid fund raisers,*** and solicitors, and for filing of contracts and other documents, shall be the following:

1. A charitable organization, which is required under the Act to file a short form registration statement and which received gross contributions of not more than $10,000 during the most recently filed fiscal year of the organization, shall not be required to pay an annual registration fee. A late fee of $25.00 shall be incurred by any organization that fails to submit the annual filing within 30 days of the annual filing deadline.

2. A charitable organization, which is required under the Act to file a short form registration statement and which received gross contributions in excess of $10,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of $30.00 a year with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.1(c). A late fee of $25.00 shall be incurred by any organization that fails to pay any annual registration fee within 30 days of the annual filing deadline.

3. A charitable organization, which is required under the Act to file a long form registration statement and which received gross

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contributions of not more than $100,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of $60.00 a year with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.1(c). A late fee of $25.00 shall be incurred by any organization that fails to pay any annual registration fee within 30 days of the annual filing deadline.

4. A charitable organization, which is required under the Act to file a long form registration statement and which received gross contributions of more than $100,000 but not more than $500,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of $150.00 a year with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.1(c). A late fee of $25.00 shall be incurred by any organization that fails to pay any annual registration fee within 30 days of the annual filing deadline.

5. A charitable organization, which is required under the Act to file a long form registration statement and which received gross contributions of more than $500,000 during the most recently filed fiscal year of the organization, shall pay an annual registration fee of $250.00 a year with the annual filing unless a filing extension was granted pursuant to N.J.A.C. 13:48-3.1(c). A late fee of $25.00 shall be incurred by any organization that fails to pay any annual registration fee within 30 days of the annual filing deadline.

6. A parent organization that registers local units in accordance with the Act shall pay its own fee and an additional fee of $10.00 for each local unit.

7. All fund raising counsel and independent paid fund raisers shall pay an annual registration fee of $250.00, payable upon initial registration and on July 1 of each renewal year thereafter. A partnership or corporation which offers either fund raising counsel or independent paid fund raiser services, or both types of services, shall pay a single annual registration fee, payable upon initial registration and on July 1 of each renewal year thereafter. Upon renewal of registration, failure to pay the fee within 30 calendar days of July 1 shall result in a late fee of $25.00.

8. In addition to the fee paid by independent paid fund raisers, a solicitor shall pay a registration fee of *[$25.00]* ***$15.00***, payable upon initial registration and on July 1 of each renewal year thereafter. Upon renewal of registration, failure to pay the fee within 30 calendar days of July 1 shall result in a late fee of $25.00.

9. The fee for filing a contract, defined for purposes of this subsection as any written agreement between a charitable organization and a fund raising counsel, independent paid fund raiser or commercial co-venturer, at least 10 days prior to commencement of any solicitation activity in the State set forth in that contract, shall be $30.00.

10. The fee for filing a final report, required to be filed by the charitable organization under Section 12b of the Act at the conclusion of a charitable sales promotion conducted by a commercial co-venturer on behalf of a charitable organization, shall be $10.00.

11. The fee for filing a financial report required to be filed by a fund raising counsel or independent paid fund raiser under Section 10g(3) of the Act for a solicitation campaign, shall be $10.00.

12. The fee for filing a written commitment, required to be filed by a fund raising counsel or independent paid fund raiser under Section 15e(1) of the Act, confirming a charitable organization's acceptance of donated tickets to an event, shall be $10.00.

13. The fee for filing a 10 day notice, required to be filed by Section 13d(1) of the Act by a law officers' organization to provide notice of any campaign involving multiple solicitations, shall be $10.00.

14. The fees for photocopies of any public record maintained pursuant to the Act shall be in accordance with N.J.S.A. 47:1A-2, specifically:

First page to tenth page	$0.75 per page
Eleventh page to 20th page	$0.50 per page
All pages over 20	$0.25 per page

(b) Where the fee imposed is based upon the gross contributions received during the most recently filed fiscal year, and a charitable organization failed to make a required filing which reports gross contributions, the fee shall be based upon the gross contributions received in the prior fiscal year.

(c) A late fee shall be deemed a primary, but not exclusive, remedy for any registration statement or other document which is not filed in a timely fashion. Any failure to file in a timely fashion is a violation of the Act and may be enforced accordingly.

(d) All fee payments shall be in the form of a check or money order made out to "The N.J. Division of Consumer Affairs", and sent to:

Division of Consumer Affairs
Regulated Business Section
P.O. Box 45021
Newark, NJ 07101

SUBCHAPTER 3. GENERAL REQUIREMENTS

13:48-3.1 Extensions of time for annual filing of the renewal statement and financial report

(a) The annual filing of the renewal statement and financial report shall be due no later than six months after the close of an organization's fiscal year unless the organization has been granted an extension of time as set forth below.

(b) For good cause shown, the Attorney General may extend the time for the annual filing of the renewal statement and financial report, for a period not to exceed 180 days, during which time the previous registration shall remain in effect. For purposes of this section and Section 6b of the Act, "good cause" shall *[mean that]* ***include, but not be limited to, the following***:

1. The Internal Revenue Service has granted an extension of time for filing the organization's tax return;

2. The chief financial officer of the charitable organization has been replaced for any reason within three months prior to the request for the extension; or

3. There is pending litigation alleging misconduct by the charitable organization which could be deemed a violation of this Act.

(c) The request for an extension shall be in writing, accompanied by the full payment of the fee due for the annual filing, and sent by registered mail (return receipt requested) to the Division of Consumer Affairs at the address set forth in N.J.A.C. 13:48-1.4. The request must be received by the Attorney General before the filing deadline. The request shall be signed by the chief executive officer of the charitable organization.

(d) If the charitable organization sought and received from the Internal Revenue Service an extension of time for filing the organization's tax return, the request shall include a photocopy of the approval granted by the Internal Revenue Service.

(e) If the chief financial officer of the charitable organization has been replaced for any reason within the three months prior to the request for extension, the chief executive officer shall certify to that fact before a request for extension can be granted.

(f) If there is pending litigation alleging misconduct by the charitable organization which could be deemed a violation of this Act, the request shall include the caption, docket number, and a statement regarding the nature of the litigation. The Attorney General may also require submission of any or all relevant financial records before a request for extension shall be granted. If documents are unavailable because they have been subpoenaed, the applicant shall have retained and be able to provide certified true copies of all documents. The applicant shall include in the request for an extension a certification that the originals are not in the applicant's possession, and shall also provide a true copy of the subpoena.

(g) Subsections (b) through (f) notwithstanding, no extension will be granted if:

1. The charitable organization is already delinquent in filing the previous year's report;

2. Fees or penalties, if any, have not been paid; or

3. The extension request does not contain full and accurate information.

(h) Acceptance of an application for extension will be acknowledged by regular mail within 10 business days of the date it was

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received by the Division, as evidenced by the date appearing on the return receipt. All denials will be sent to the applicant by certified mail, return receipt requested, within 10 business days.

TRANSPORTATION

(a)

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

Speed Limits
Route 23
Franklin Borough, Sussex County
Adopted Amendment: N.J.A.C. 16:28-1.25

Proposed: July 5, 1994 at 26 N.J.R. 2749(a).
Adopted: August 15, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: August 16, 1994 as R.1994 d.465, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.
Effective Date: September 19, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28-1.25 Route 23
(a) The rate of speed designated for the certain parts of State highway Route 23 described in this subsection shall be established and adopted as the maximum legal rate of speed.
1.-3. (No change.)
4. For both directions of traffic:
i. (No change.)
ii. In Franklin Borough, Sussex County:
(1) Zone one: 40 mph between the Hardyston Township-Franklin Borough corporate line and 1,100 feet north of Munsonhurst Road (County Road 517) (approximate mileposts 31.40 to 31.90); thence
(2) Zone two: 35 mph between 1,100 feet north of Munsonhurst Road (County Road 517) and Mabie Street, except for 25 mph when passing through the Franklin Elementary School zone while "25 mph When Flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours (approximate mileposts 31.90 to 33.40); thence
(3) Zone three: 40 mph between Mabie Street and the Franklin Borough-Hamburg Borough corporate line (approximate mileposts 33.40 to 34.28).
iii.-iv. (No change.)

(b)

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

Speed Limits
Route N.J. 47
Dennis Township, Cape May County
Adopted Amendment: N.J.A.C. 16:28-1.132

Proposed: July 18, 1994 at 26 N.J.R. 2867(a).
Adopted: August 22, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: August 24, 1994 as R.1994 d.478, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.
Effective Date: September 19, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28-1.132 Route 47
(a) The rate of speed designated for the certain part of State highway Route 47 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:
1. In Cape May County:
i.-iii. (No change.)
iv. Dennis Township:
(1) Zone 1: 50 miles per hour between the Middle Township-Dennis Township corporate line and Beaver Dam Road (County Road 657) (approximate mileposts 15.96 to 16.79).
(2) Zone 2: 45 miles per hour between Beaver Dam Road (County Road 657) and 200 feet north of the bridge over Dennis Creek (approximate mileposts 16.79 to 17.73).
(3) Zone 3: 50 miles per hour between 200 feet north of the bridge over Dennis Creek to the Dennis Township-Maurice River Township corporate line (approximate mileposts 17.73 to 24.45).
2.-4. (No change.)

(c)

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

Restricted Parking and Stopping
Route 35
Berkeley Township, Ocean County
Adopted Amendment: N.J.A.C. 16:28A-1.25

Proposed: July 5, 1994 at 26 N.J.R. 2749(b).
Adopted: August 15, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: August 16, 1994 as R.1994 d.466, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.
Effective Date: September 19, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28A-1.25 Route 35
(a) The certain parts of State highway Route 35 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, 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 at a point 100 feet north of the northerly curb line of 20th Avenue and extending southerly to Island Beach State Park property line.
ii. Along the northbound (easterly) side:
(1) From the Island Beach State Park property line and extending northerly to the northerly curb line of 14th Avenue.
iii. Along the center of the roadway:
(1) Beginning at the northerly curb line of 24th Avenue and extending to the Island Beach State Park.
(b)-(e) (No change.)

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(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping Route N.J. 47

Adopted Repeal and New Rule: N.J.A.C. 16:28A-1.33

Proposed: July 18, 1994 at 26 N.J.R. 2867(b).
Adopted: August 22, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: August 24, 1994 as R.1994 d.479, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.
Effective Date: September 19, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
The Department received a copy of Resolution No. 94-126 dated June 27, 1994, from Albert Knoll, Township Administrator for Dennis Township, Cape May County, in favorable support of no stopping or standing zones to be established in Dennis Township.

Full text of the adoption follows:

16:28A-1.33 Route 47

(a) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. In Cape May County:

i. In Middle Township:

(1) Along both sides:

(A) Between milepost 3.0 and milepost 4.1 including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(B) Between Fulling Mill Road and Paula Lane (approximate mileposts 5.0 to 6.05).

(2) Along the southbound side:

(A) From the northerly curb line of Indian Trail (County Road 585 Spur), Green Creek to a point 275 feet northerly therefrom (approximate mileposts 8.81 to 8.86).

ii. In Dennis Township:

(1) Along both sides:

(A) For the entire length within the corporate limits of Dennis Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation (approximate mileposts 15.95 to 24.45).

2. In Cumberland County:

i. In Maurice Township:

(1) Along both sides:

(A) From Hands Mill Road to South Street (approximate mileposts 26.92 to 33.48).

(B) All ramps and connections under the jurisdiction of the Commissioner of Transportation.

ii. In the City of Millville:

(1) Along both sides:

(A) From a point 1,715 feet south of the southerly curb line of Orange Street to a point 350 feet north of the northerly curb line of Orange Street (approximate mileposts 37.88 to 38.24).

(2) Along the northbound side:

(A) From a point 75 feet south of the southerly curb line of Mulberry Street to a point 75 feet north of the northerly curb line of Mulberry Street (approximate mileposts 40.22 to 40.24).

(B) From the northerly curb line of Vine Street to a point 75 feet north of the northerly curb line of East Oak Street (approximate mileposts 40.32 to 40.4).

(C) Between a point 100 feet south of the southerly curb line of Garfield Street and the intersection of Main Street (approximate mileposts 39.39 to 40.02).

(D) From the northerly curb line of "F" Street to the Millville City-Vineland City corporate line (approximate mileposts 40.2 to 42.4).

(3) Along the southbound side:

(A) From the Millville City-Vineland City corporate line to the prolongation of the southerly curb line of Garfield Avenue (approximate mileposts 42.36 to 39.40).

iii. In the City of Vineland:

(1) Along both sides:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation (approximate mileposts 42.36 to 51.79).

3. In Gloucester County:

i. In Franklin Township:

(1) Along both sides:

(A) Beginning at the southerly curb line of New Street to the southerly curb line of Marshall Mill Drive (approximate mileposts 52.18 to 53.1).

(B) From a point 350 feet south of the southerly curb line of Grant Avenue to the southerly curb line of Hall Avenue-Little Mill Road (approximate mileposts 57.4 to 57.76).

(2) Along the northbound side:

(A) From a point 350 feet south of the southerly curb line of Blackwoodtown Road to a point 500 feet north of the northerly curb line of Blackwoodtown Road (approximate mileposts 54.94 to 55.12).

(B) From a point 200 feet south of the southerly curb line of Coles Mill Road to McArthur Avenue (approximate mileposts 56.3 to 56.62).

(3) Along the southbound side:

(A) Beginning at the southerly curb line of County Road 538 (Coles Mill Road) to a point 270 feet southerly therefrom (approximate mileposts 56.35 to 56.30).

ii. In Glassboro Borough:

(1) Along the northbound side:

(A) From the southerly curb line of Route U.S. 322-High Street to a point 425 feet southerly therefrom (approximate mileposts 62.20 to 62.29).

(B) From Route U.S. 322-West Street to Green Tree Road (approximate mileposts 62.66 to 63.12).

(C) From Bristol Drive to Heston Road (approximate mileposts 63.3 to 63.65).

(2) Along the southbound side:

(A) From Heston Road to Green Tree Road (approximate mileposts 63.65 to 63.12);

(B) From Spencer Street to Market Place (approximate mileposts 63.1 to 63.02);

(C) From the southerly curb line of Route U.S. 322-High Street to a point 120 feet southerly therefrom (approximate mileposts 62.29 to 62.27);

(D) All ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

iii. In Washington Township:

(1) Along both sides:

(A) For the entire length within the corporate limits of Washington Township, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation (approximate mileposts 64.86 to 68.16).

iv. In Deptford Township:

(1) Along both sides:

(A) From a point 250 feet south of the southerly curb line of Cooper Street to a point 700 feet southerly therefrom (approximate mileposts 71.52 to 71.70).

(2) Along the northbound side:

(A) From a point 70 feet south of the southerly curb line of Park Avenue to a point 250 feet north of the northerly curb line of Oak Avenue (approximate mileposts 73.31 to 73.40).

v. In Westville Borough:

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(1) Along the northbound side:

(A) From the Deptford Township-Westville Borough corporate line to the southerly curb line of Almonesson Avenue (approximate mileposts 73.77 to 74.25);

(B) From a point 160 feet south of the prolongation of the southerly curb line of the safety island at the intersection of Route 47 and Broadway and the Borough of Westville-Borough of Brooklawn corporate line at Timber Creek (approximate mileposts 74.62 to 74.88).

(2) Along the southbound side:

(A) Between the Borough of Brooklawn-Borough of Westville corporate line at Timber Creek and a point 115 feet south of the prolongation of the southerly curb line of the safety island at the intersection of Route 47 and Broadway (approximate mileposts 74.88 to 74.63).

(B) From the Deptford Township-Westville Borough corporate line to a point 250 feet north of the northerly curb line of Olive Street (approximate mileposts 74.02 to 73.77).

(b) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "bus stops" 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 bus stops:

1. In Cumberland County:

i. In the City of Millville:

(1) Near side bus stops:

(A) East Vine Street (northbound)—beginning at the southerly curb line of East Vine Street and extending 105 feet southerly therefrom.

ii. In the City of Vineland:

(1) Mid-block bus stops:

(A) (Southbound)—between College Drive and Route 55 beginning 1,580 feet south of the southerly curb line of College Drive and extending 135 feet southerly therefrom.

2. In Gloucester County:

i. In Franklin Township:

(1) Mid-block bus stops:

(A) (Northbound)—beginning 420 feet south of the southerly curb line of Marshall Mill Road and extending 135 feet southerly therefrom.

(B) (Northbound)—beginning 350 feet south of the southerly curb line of Pennsylvania Avenue and extending 135 feet southerly therefrom.

ii. In Glassboro Borough:

(1) Far side bus stops:

(A) (Southbound) Grove Street—beginning at the southerly curb line of Grove Street and extending 100 feet southerly therefrom.

(2) Mid-block bus stops:

(A) (Northbound)—between High Street and Grove Street—beginning 490 feet south of the southerly curb line of High Street and extending 135 feet southerly therefrom.

iii. In Deptford Township:

(1) Near side bus stops:

(A) Kohler Avenue (northbound)—beginning at the southerly curb line of Kohler Avenue and extending 105 feet southerly therefrom;

(B) Taras Avenue (northbound)—beginning at the southerly curb line of Taras Avenue and extending 120 feet southerly therefrom;

(C) Park Avenue (northbound)—beginning at the southerly curb line of Park Avenue and extending 105 feet southerly therefrom;

(D) Shetland Way (southbound)—beginning at the prolongation of the northerly curb line of Shetland Way and extending 105 feet northerly therefrom;

(E) Oak Street (southbound)—beginning at the prolongation of the northerly curb line of Oak Street and extending 120 feet northerly therefrom;

(F) Taras Avenue (southbound)—beginning at the prolongation of the northerly curb line of Taras Avenue and extending 105 feet northerly therefrom;

(G) Narraticon Parkway (southbound)—beginning at the northerly curb line of Narraticon Parkway and extending 105 feet northerly therefrom.

(2) Far side bus stops:

(A) Red Stone Ridge Drive (northbound)—beginning at the northerly curb line of Red Stone Ridge Drive and extending 100 feet northerly therefrom;

(B) Essex Boulevard (northbound)—beginning at the northerly curb line of Essex Boulevard and extending 100 feet northerly therefrom;

(C) Oak Street (northbound)—beginning at the northerly curb line of Oak Street and extending 120 feet northerly therefrom;

(D) Shetland Way (northbound)—beginning at the northerly curb line of Shetland Way and extending 100 feet northerly therefrom;

(E) Kohler Avenue (southbound)—beginning at the prolongation of the southerly curb line of Kohler Avenue and extending 150 feet southerly therefrom;

(F) Red Stone Ridge Drive (southbound)—beginning at the prolongation of the southerly curb line of Red Stone Ridge Drive and extending 100 feet southerly therefrom;

iv. In Westville Borough:

(1) Near side bus stops:

(A) Almonesson Avenue (northbound)—beginning at the southerly curb line of Almonesson Avenue and extending 110 feet southerly therefrom.

(c) The certain parts of State highway Route 47, described in this subsection, shall be designated and established as "handicapped parking" areas, where parking is prohibited in spaces appropriately marked for vehicles for the physically handicapped pursuant to N.J.S.A. 39:4-197.5. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following handicapped parking areas:

1. In Cumberland County:

i. In the City of Millville:

(1) Along the northbound (easterly side):

(A) Beginning at a point 170 feet north of the northerly curb line of Broad Street to a point 192 feet northerly therefrom.

(d) The certain parts of State highway Route 47, described in this subsection, shall be designated and established as "loading 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 loading zones:

1. In Cumberland County:

i. In the City of Millville:

(1) Along the northbound (easterly side):

(A) Beginning at a point 42 feet south of the southerly curb line of Broad Street and extending 50 feet southerly therefrom.

(e) The certain parts of State highway Route 47, described in this subsection, shall be designated and established as "no stopping or standing during certain hours" zones," where stopping or standing is prohibited during certain hours, except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of 39:4-198, proper signs shall be erected.

1. In Cumberland County:

i. In the City of Millville:

(1) Along the southbound (westerly side):

(A) Between Garfield Avenue and Henderson Avenue between the hours of 4:00 P.M. Friday through 8:00 A.M. Monday (approximate mileposts 39.40 to 39.05).

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(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions

Route U.S. 130

Bordentown Township, Mansfield Township, Florence Township, Burlington Township and Burlington City in Burlington County and Hamilton Township and Washington Township in Mercer County

Adopted Amendment: N.J.A.C. 16:31-1.22

Proposed: July 18, 1994 at 26 N.J.R. 2870(a).
Adopted: August 22, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: August 24, 1994 as R.1994 d.480, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.
Effective Date: September 19, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:31-1.22 Route U.S. 130
(a) Turning movements of traffic on certain parts of State highway Route U.S. 130 described in this subsection are regulated as follows:
1.-3. (No change.)
4. No "U" turns for trucks over four tons registered gross weight:
i. In Bordentown Township, Mansfield Township, Florence Township, Burlington Township and Burlington City in Burlington County:
(1) Along Route U.S. 130 northbound at:
(A) Old Burlington Road, Bordentown Township (approximate milepost 53.5).
(B) Mershon Concrete driveway, Mansfield Township (approximate milepost 52.45).
(C) 84 Lumber driveway, Florence Township (appoximate milepost 49.9).
(2) Along Route U.S. 130 southbound at:
(A) Hedding-Kinkora Road, Mansfield Township (approximate milepost 52.6).
(B) Citgo Station driveway, Florence Township (approximate milepost 49.32).
(C) McAllister Trucking driveway, Burlington Township (approximate milepost 48.45).
(D) Burlington Coat Factory driveway, Burlington City (approximate milepost 47.5).
(3) Along Route U.S. 130 for both directions:
(A) Between mileposts 56.0 and 58.28.
ii. In Hamilton Township, Mercer County:
(1) Along Route U.S. 130 for both directions:
(A) Between mileposts 58.28 and 61.93; and
iii. In Washington Township, Mercer County:
(i) Along Route U.S. 130 for both directions:
(A) Between mileposts 61.93 and 64.0.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions

Route 42

Monroe and Washington Townships, Gloucester County

Adopted New Rule: N.J.A.C. 16:31-1.35

Proposed: July 5, 1994 at 26 N.J.R. 2750(a).
Adopted: August 15, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: August 16, 1994 as R.1994 d.467, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-125, 39:4-183.6 and 39:4-199.1.
Effective Date: September 19, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:31-1.35 Route 42
(a) Turning movements on certain parts of State highway Route 42 described in this subsection are regulated as follows:
1. In Gloucester County:
i. Monroe Township:
(1) No "U" turn for vehicles over four tons registered gross weight northbound at:
(A) Route N.J. 42 and Lindale Avenue (approximate milepost 0.30).
(B) Route N.J. 42 and Pedrick Avenue (approximate milepost 0.35).
(C) Route N.J. 42 and Maxine Avenue (approximate milepost 0.62).
(D) Route N.J. 42 and Grandview Avenue (approximate milepost 1.28).
(E) Route N.J. 42 and Columbus Manor (approximate milepost 1.40).
(F) Route N.J. 42 and Kennedy Drive (approximate milepost 2.05).
(G) Route N.J. 42 and Georgiana Avenue (approximate milepost 2.24).
(H) Route N.J. 42, 650 feet south of Berlin-Cross Keys Road (County Road 689) (approximate milepost 2.50).
(2) No "U" turn for vehicles over four tons registered gross weight southbound at:
(A) Route N.J. 42 and Pine Street (approximate milepost 0.15).
(B) Route N.J. 42 and Lake Avenue (approximate milepost 0.75).
(C) Route N.J. 42 and Laurel Avenue (approximate milepost 1.48).
(D) Route N.J. 42, 400 feet north of Fenwick Avenue (approximate milepost 1.75).
(E) Route N.J. 42 and Prosser Avenue (approximate milepost 2.25).
(3) No "U" turns northbound at:
(A) Route N.J. 42 and Pine Street (approximate milepost 0.15).
(B) Route N.J. 42 and Lake Avenue (approximate milepost 0.75).
(C) Route N.J. 42 and Laurel Avenue (approximate milepost 1.48).
(D) Route N.J. 42, 400 feet north of Fenwick Avenue (approximate milepost 1.75.
(E) Route N.J. 42 and Prosser Avenue (approximate milepost 2.25).
(4) No "U" turns southbound at:
(A) Route N.J. 42 and Lindale Avenue (approximate milepost 0.30).

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(B) Route N.J. 42 and Pedrick Avenue (approximate milepost 0.35).
(C) Route N.J. 42 and Maxine Avenue (approximate milepost 0.62).
(D) Route N.J. 42 and Grandview Avenue (approximate milepost 1.28).
(E) Route N.J. 42 and Columbus Manor (approximate milepost 1.40).
(F) Route N.J. 42 and Kennedy Drive (approximate milepost 2.05).
(G) Route N.J. 42 and Georgiana Avenue (approximate milepost 2.24).
(H) Route N.J. 42, 650 feet south of Berlin-Cross Keys Road (County Road 689) (approximate milepost 2.50).
ii. Washington Township:
(1) No "U" turns for vehicles over four tons registered gross weight northbound at:
(A) Route N.J. 42, 740 feet north of Ledden Avenue (approximate milepost 4.50).
(B) Route N.J. 42, 1,000 feet south of Fries Mill Road (approximate milepost 4.71).
(C) Route N.J. 42, 230 feet south of Madison Avenue (approximate milepost 4.18).
(2) No "U" turns for vehicles over four tons registered gross weight southbound at:
(A) Route N.J. 42 and Madison Avenue (approximate milepost 4.2).
(3) No "U" turns northbound at:
(A) Route N.J. 42 and Madison Avenue (approximate milepost 4.20).
(4) No "U" turns southbound at:
(A) Route N.J. 42, 740 feet north of Ledden Avenue (approximate milepost 4.50).
(B) Route N.J. 42, 1,000 feet south of Fries Mill Road (approximate milepost 4.71).
(C) Route N.J. 42, 230 feet south of Madison Avenue (approximate milepost 4.18).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route U.S. 40/322
Egg Harbor Township, Atlantic County
Adopted New Rule: N.J.A.C. 16:31-1.36

Proposed: July 18, 1994 at 26 N.J.R. 2871(a).
Adopted: August 22, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: August 24, 1994 as R.1994 d.481, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.
Effective Date: September 19, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:31-1.36 Route U.S. 40/322
(a) Turning movements of traffic on certain parts of State highway Route U.S. 40/322 described in this subsection are regulated as follows:
1. In Atlantic County:
i. Egg Harbor Township:
(1) No "U" turn for vehicles over four tons registered gross weight eastbound at:
(A) Route U.S. 40/322, 100 feet west of Tower Avenue (approximate milepost 53.3).
(2) No "U" turn for vehicles over four tons registered gross weight westbound at:
(A) Route U.S. 40/322, 580 feet east of Zaberer Avenue (approximate milepost 53.3).
(3) No "U" turns eastbound at:
(A) Route U.S. 40/322, 580 feet east of Zaberer Avenue (approximate milepost 53.3).
(4) No "U" turns westbound at:
(A) Route U.S. 40/322, 100 feet west of Tower Avenue (approximate milepost 53.3).

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION
Applications
Identification
Adopted Amendment: N.J.A.C. 19:41-7.2A

Proposed: June 20, 1994 at 26 N.J.R. 2565(a).
Adopted: August 18, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.
Filed: August 19, 1994 as R.1994 d.470, **without change**.
Authority: N.J.S.A. 5:12-69 and 70a.
Effective Date: September 19, 1994.
Expiration Date: April 15, 1995.

Summary of Public Comments and Agency Responses:
Comments were received from the Division of Gaming Enforcement (Division) and Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino (Sands).
COMMENT: The Division indicated that it supports the adoption of the proposed amendment.
RESPONSE: Accepted.
COMMENT: The Sands stated that it has no objection to the adoption of the proposed amendment.
RESPONSE: Accepted.

Full text of the adoption follows:

19:41-7.2A Identification
(a) (No change.)
(b) A natural person may establish his or her identity pursuant to (a) above by providing either:
1. (No change.)
2. Any two of the following authentic documents:
i.-iii. (No change.)
iv. A current student identification card containing a photograph, an expiration date, the seal or logo of the issuing institution, and the signature of the card holder;
v.-vii. (No change.)
(c)-(d) (No change.)

(c)

CASINO CONTROL COMMISSION
Accounting and Internal Controls
Application of Cash Complimentary Gifts to Counter Checks, Returned Checks or Cash Deposits
Adopted Amendments: N.J.A.C. 19:45-1.1, 1.9B, 1.24, 1.26, 1.27 and 1.29

Proposed: June 6, 1994 at 26 N.J.R. 2212(a).
Adopted: August 18, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.
Filed: August 19, 1994 as R.1994 d.471, **without change**.
Authority: N.J.S.A. 5:12-63(c), 69, 70(g) and (l) and 99.

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Effective Date: September 19, 1994.
Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:
COMMENT: The Division of Gaming Enforcement supports the amendments as proposed.
RESPONSE: Accepted.
COMMENT: The Sands Hotel and Casino does not object to the proposed amendments.
RESPONSE: Accepted.

Full text of the adoption follows:

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.
...
"Patron cash deposit" means an amount of cash, cash equivalent, complimentary cash gift, gaming chips or plaques deposited with a casino by a patron for his or her subsequent use.
...

19:45-1.9B Procedures for complimentary cash and noncash gifts
(a)-(j) (No change.)
(k) Notwithstanding any other provisions of this section, a casino licensee which intends to provide a complimentary cash gift to a patron in accordance with the requirements of N.J.S.A. 5:12-102m and this chapter may, upon receipt of a written request from the patron and in accordance with internal controls approved by the Commission, credit the cash complimentary directly to:
1. The payment of any outstanding Counter Checks or Slot Counter Checks issued by the patron and held by that casino licensee in accordance with the provisions of N.J.A.C. 19:45-1.26, 1.27 and 1.28;
2. The payment of any returned checks issued by the patron and held by that casino licensee in accordance with the provisions of N.J.A.C. 19:45-1.29; or
3. The establishment or enhancement of a cash deposit held for the benefit of the patron in accordance with the provisions of N.J.A.C. 19:45-1.24.
(l) The written request required pursuant to (k) above shall be attached to documentation of the cash complimentary gift maintained by the casino licensee pursuant to its approved internal controls.
1. The written request shall include, at a minimum, the following:
i. The date of the request;
ii. The name and address of the patron;
iii. Instructions as to the use to which the cash complimentary is to be credited; and
iv. The signature of the patron.
2. Prior to the crediting of any complimentary cash gift to the payment of an outstanding counter check, slot counter check or returned check, the general cashier or check cashier shall verify that the signature of the patron on the request agrees with the signature of the patron in the credit file.

19:45-1.24 Procedure for acceptance, accounting for and redemption of patron's cash deposits
(a) Whenever a patron requests that the casino hold his or her cash, cash equivalents, complimentary cash gift, gaming chips or plaques for subsequent use he or she shall deposit the cash, cash equivalents, complimentary cash gift, gaming chips or plaques with a general cashier.
(b)-(q) (No change.)

19:45-1.26 Procedure for redemption, consolidation or substitution of checks submitted by gaming patrons
(a) The drawer of a Counter Check or Slot Counter check may redeem it by exchanging cash, cash equivalents, complimentary cash gifts, gaming chips, plaques or any combination of another check, cash, cash equivalents, complimentary cash gifts, gaming chips or plaques. If a drawer has more than one Counter Check or Slot Counter Check outstanding, such checks shall be redeemed in reverse chronological order (the most recently dated check shall always be redeemed first). If more than one check bears the same date, the drawer may choose the order in which he wishes to redeem the identically dated checks.
(b)-(e) (No change.)
(f) Upon acceptance of cash, cash equivalents, complimentary cash gifts, gaming chips and plaques, or another check in redemption, consolidation or substitution of a check(s), the general cashier shall immediately return to the gaming patron the check(s) being redeemed, consolidated or substituted. If such redemption, consolidation or substitution is accomplished by the acceptance of another check, the general cashier accepting such check shall date and time stamp the check, place his or her initials on the check, and record on the check the serial number of the Counter Check(s) or Slot Counter Check(s) being redeemed, consolidated or replaced.

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated
(a)-(k) (No change.)
(l) A log of all Counter Checks and Slot Counter Checks exchanged and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a daily basis, by check cashiers and such log shall include, at a minimum, the following:
1.-2. (No change.)
3. For checks deposited, redeemed by patrons for cash, cash equivalents, complimentary cash gifts, gaming chips and plaques, or any combination thereof, consolidated or replaced:
i.-v. (No change.)
4. (No change.)
(m)-(o) (No change.)

19:45-1.29 Procedure for collecting and recording checks returned to the casino after deposit
(a)-(b) (No change.)
(c) Continuous records of all returned checks shall be maintained by accounting department employees with no incompatible functions. Such records, shall include, at a minimum, the following:
1.-5. (No change.)
6. The date(s) and amount(s) of any collections received on the check after being returned by a bank, including the date(s) and amount(s) of any complimentary cash gifts applied as payment on the check after being returned by a bank.
(d)-(k) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedures for Accepting, Verifying and Accounting For Wire Transfers; Wire Transfer Fees
Adopted Amendment: N.J.A.C. 19:45-1.24A

Proposed: June 6, 1994 at 26 N.J.R. 2215(a).
Adopted: August 18, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.
Filed: August 19, 1994 as R.1994 d.472, **without change**.
Authority: N.J.S.A. 5:12-69(a), 70(g), 99(a) and 101.
Effective Date: September 19, 1994.
Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:
COMMENT: The Division of Gaming Enforcement and Greate Bay Hotel & Casino, Inc. (the Sands Hotel and Casino) indicated they did not object to the proposal, and Marina Associates (Harrah's Casino Hotel) supported the adopiton of the proposal.
RESPONSE: Accepted.

Full text of the adoption follows:

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19:45-1.24A Procedures for accepting, verifying and accounting for wire transfers; wire transfer fees

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

(c) Upon notification in accordance with (b) above that a wire transfer of funds has been credited to the casino licensee's operating account, the cage employee who received the notice shall record, at a minimum, the following information in the notification section of a Wire Transfer Log maintained in the main bank of the cashiers' cage:

1.-3. (No change.)

4. The actual amount of funds transferred to the operating account of the casino licensee, stated in numbers and words;

5.-7. (No change.)

(d) (No change.)

(e) Upon verification of the wire transfer and completion of the Wire Transfer Log, the general cashier of the casino licensee shall be deemed, for purposes of compliance with the Commission's rules, to have received cash at the general cashiers' cage in an amount equal to the actual amount of funds transferred to the operating account of the casino licensee.

(f) Upon determining the purpose for the wire transfer, a cage supervisor shall prepare a Wire Transfer Acknowledgement Form, a two-part form containing, at a minimum, the following information:

1.-2. (No change.)

3. The actual amount of funds received pursuant to the wire transfer, stated in numbers and words;

4.-7. (No change.)

(g)-(h) (No change.)

(i) Upon the receipt and processing of a wire transfer of funds in accordance with the provisions of this section, a casino licensee may, in its discretion, credit to the patron's account the amount of any wire transfer fees charged against the original amount of the wire transfer, provided that:

1. The credit shall be limited to the lesser of $250.00 or the actual amount of the wire transfer fees charged by any financial institution involved in the wiring of the funds;

2. The purpose of the wire transfer is to enable a transaction identified in (a)2 or 3 above and the credit is applied toward the completion of that transaction;

3. The credit is authorized and recorded by the casino licensee pursuant to internal controls approved by the Commission, which internal controls shall, at a minimum, include:

i. The creation of a record identifying the date and the amount of the credit and the sequential wire transfer number of the wire transfer for which the credit is being issued; and

ii. The recording of the credit as a balancing item on the main bank summary.

(j) Notwithstanding any other provision of this chapter, the amount of a credit of wire transfer fees authorized by (i) above need not be included in determining the amount of cash complimentaries which may be issued to a patron pursuant to N.J.A.C. 19:45-1.9B.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Procedure for Exchange of Checks Submitted by Gaming Patrons or Simulcast Wagering Patrons; Repurchase of Cash Equivalents by Gaming Patrons

Adopted Amendment: N.J.A.C. 19:45-1.25

Proposed: June 6, 1994 at 26 N.J.R. 2216(a).

Adopted: August 18, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.

Filed: August 19, 1994 as R.1994 d.473, **with a technical change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69(a), 70(g), 99(a) and 101.

Effective Date: September 19, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement and Greate Bay Hotel and Casino, Inc. (Sands Hotel & Casino) indicated that they did not object to the proposal; Marina Associates (Harrah's Hotel-Casino) indicated it supports the adoption of the proposal.

RESPONSE: Accepted.

Summary of Agency-Initiated Changes:

A technical change was made, deleting the word "or" to correct a typographical error in N.J.A.C. 19:45-1.25(e)4.

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

19:45-1.25 Procedure for exchange of checks submitted by gaming or simulcast wagering patrons; repurchase of cash equivalents

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

(e) Cash equivalents and casino checks, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers.

1. Prior to the acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent. Prior to the acceptance of any casino check from a patron, the general cashier shall comply with the requirements of (f) below.

2. In order to ensure the patron's identity, prior to the acceptance of a cash equivalent made payable to a presenting patron or of a casino check issued pursuant to N.J.S.A. 5:12-101(g), the general cashier shall be required to examine that patron's identification credentials or verify that the patron's signature recorded on the cash equivalent or casino check and the patron's physical description agree with the information recorded in the patron's credit file prepared pursuant to N.J.A.C. 19:45-1.27. Each casino licensee shall maintain documentation supporting that examination or verification.

3. Any cash equivalent other than a travelers check or credit card and any casino check which is accepted from a patron by a general cashier shall be:

i. Endorsed in blank by the patron (but in the case of a cash equivalent, only if the cash equivalent is made payable to the presenting patron); and

ii. Except as otherwise provided in (e)4ii below, restrictively endorsed "For Deposit Only" to the bank account of the casino licensee immediately upon acceptance by the general cashier and deposited no later than the next banking day following the date of the transaction.

4. A casino licensee may, in its discretion, allow a patron who has exchanged a cash equivalent (other than a travelers check or credit card) for currency, coin or a Customer Deposit Form to repurchase the cash equivalent for an equal amount of cash, gaming chips, plaques or slot tokens prior to the deposit of the cash equivalent *[or]* by the casino licensee. If a casino licensee agrees to provide a patron with this repurchase option, the general cashier shall, prior to acceptance of the cash equivalent:

i. Immediately determine the validity of the cash equivalent by performing the verification required in (e)1 above; and

ii. In lieu of complying with the requirements of (e)3ii above, comply with the approved internal control procedures of the casino licensee for the processing of such transactions, which procedures shall include, at a minimum, the following:

(1) The creation of an audit trail which shall assure that no single employee is in a position to convert the cash equivalent to his or her personal use without detection;

(2) The establishment of a definite time limit on the repurchase rights of the patron, which time limit shall be no later than the end of the fifth calendar day following the date of acceptance of the cash equivalent; and

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(3) Upon expiration of the time limit required by (e)4ii(2) above, the immediate restrictive endorsement of the cash equivalent "For Deposit Only" to the bank account of the casino licensee, and the deposit of the cash equivalent by no later than the next banking day.

(f) (No change.)

(g) Each casino licensee shall maintain a casino check log.

1. The general cashier of the casino licensee accepting a casino check shall document the verifications performed in (f) above in the casino check log and shall record the name of the cashier providing such information and the date and time the information was obtained. In addition, the general cashier shall record his or her name and license number in the log.

2. A general cashier of the New Jersey casino which issued the casino check shall provide the information required by (f) above to the casino licensee accepting such check, and shall indicate that verification was requested by notating in the casino check log the following information:

1.-7. (No change.)

(h) Prior to acceptance of a travelers check from a patron, the general cashier shall verify its validity by:

i. Requiring the patron to countersign the travelers check in his or her presence;

ii. Comparing the countersignature with the original signature on the travelers check;

iii. Examining the travelers check for any other signs of tampering, forgery or alteration; and

iv. Performing any other procedures which the issuer of the travelers check requires in order to indemnify the acceptor against loss.

(i)-(p) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Slot Machines and Bill Changers; Coin and Slot Token Containers; Slot Cash Storage Boxes; Entry Authorization Logs
Adopted Amendment: N.J.A.C. 19:45-1.36

Proposed: June 6, 1994 at 26 N.J.R. 2217(a).

Adopted: August 18, 1994 by the Casino Control Commission, James Hurley, Acting Chairman.

Filed: August 19, 1994 as R.1994 d.474, **with a substantive change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 69(a), 99(a) and 100(c).

Effective Date: September 19, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comment and Agency Response:

COMMENT: Greate Bay Hotel and Casino indicated that it did not object to the proposal.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement supports the adoption of the proposed amendments with a minor technical change. The Division recommends that the Machine Entry Authorization Log contain a separate designated area to clearly distinguish an entry into the bill changer from an entry into the slot machine.

RESPONSE: Accepted.

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

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage boxes; entry authorization logs

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

(k) Unless a computer which automatically records the information specified in (k)1, 2, and 3 below is connected to the slot machines in the casino, the following entry authorization logs shall be maintained by the casino licensee:

1.-2. (No change.)

3. With the exception of the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17(a), whenever it is required that a bill changer, other than a separate slot cash storage box compartment, be opened, certain information shall be recorded on a form to be entitled "Bill Changer Log." The information shall include, at a minimum, the date, time, purpose of opening the bill changer, and the signature of the authorized employee opening the bill changer. The Bill Changer Log shall be maintained in the bill changer and shall have recorded thereon a sequential number and the serial number or asset number of the bill changer. If the bill changer is contained completely within the cabinet of a slot machine and there is no separate access to the bill changer unit, the information may be recorded on the Machine Entry Authorization Log required by (k)1 above***, provided that any information that concerns the opening of the bill changer may be distinguished from any information that concerns the opening of the slot machine or any other device connected thereto***.

(b)

CASINO CONTROL COMMISSION

Notice of Administrative Change
Persons Doing Business with Casino Licensees
Duration of Licenses; Renewal
N.J.A.C. 19:51-1.8

Take notice that the Casino Control Commission has requested, and the Office of Administrative Law has agreed to permit, administrative changes to N.J.A.C. 19:51-1.8(c) and (c)2ii to revise cross-references therein to N.J.A.C. 19:51-1.2(e) and (f) to N.J.A.C. 19:51-1.2A(d) and (e). These changes are necessary due to the recodification and amendment of N.J.A.C. 19:51-1.2(e) through (j) as N.J.A.C. 19:51-1.2A(d) through (g), effective May 2, 1994 (see 26 N.J.R. 339(b) and 1847(b)). This notice of administrative change is published pursuant to N.J.A.C. 1:30-2.7.

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

19:51-1.8 Duration of licenses; renewal

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

(c) The Commission shall notify each casino service industry enterprise licensed pursuant to the provisions of N.J.S.A. 5:12-92c, at least 120 days prior to the expiration of the current license term, whether that enterprise licensee is conducting business on a regular or continuing basis in accordance with the criteria set forth in N.J.A.C. 19:51-[1.2(e) and (f)] **1.2A(d) and (e)**.

1. If the Commission determines that an enterprise licensee is conducting business on a regular or continuing basis, the enterprise shall be required to file an application for the renewal of its license in accordance with the provisions of (a) above.

2. If the Commission determines that an enterprise licensee is not conducting business on a regular or continuing basis, the enterprise shall not be required to renew its casino service industry enterprise license. Any enterprise licensee notified that it is not required to renew its license shall:

i. Have the option to renew its enterprise license voluntarily by complying with the requirements of (a) above; and

ii. Be required, until the expiration of its current license, to notify the Commission immediately of any agreements, whether contemplated or in effect, which would result in cumulative transactions which would meet the regular or continuing business criteria set forth in N.J.A.C. 19:51-[1.2(f)]**1.2A(e)**.

(d)-(f) (No change.)

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PUBLIC NOTICES

PERSONNEL

(a)

MERIT SYSTEM BOARD

Notice of Receipt of Petition for Rulemaking

N.J.A.C. 4A:3-4.22

Petitioner: Thomas P. Thatcher.

Take notice that a petition for rulemaking was received on July 25, 1994 concerning the promulgation of a new rule, N.J.A.C. 4A:3-4.22, Minimum promotional salary standards: State Service.

The petitioner states that a new N.J.A.C. 4A:3-4.22 should be promulgated to require that, when a permanent employee with a "Meets Standards" performance rating receives a promotion to a title with a higher class code, the salary to be received from then on by the employee shall not be less than that which the employee would have received had the employee not been promoted. The petitioner further states that the proposal is intended to rectify a salary inequity currently in existence in which an employee can receive a promotion from a title in a negotiations unit to a nonrepresented managerial title and ultimately earn substantially less than the employee would have earned without the promotion. He states that this recently happened to him.

The petition for rulemaking will receive further review by the Department of Personnel. Following this review, the Department shall mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition, in accordance with the provisions of N.J.A.C. 1:30-3.6.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF WATER QUALITY

Notice of Adoption

1993-94 New Jersey Pollutant Discharge Elimination System (NJPDES) Annual Fee Report and Assessment of Fees

Take notice that the Department of Environmental Protection (Department) hereby adopts the 1993-94 New Jersey Pollutant Discharge Elimination System (NJPDES) Annual Fee Report and Assessment of Fees (Annual Fee Report) for the fiscal year 1994. In accordance with N.J.A.C 7:14A-1.8, publication of this notice marks the completion of the fiscal year 1994 budgeting process.

Notice of the public hearing and opportunity to comment on the proposed FY94 budget and fee schedule was provided in the New Jersey Register on June 20, 1994, at 26 N.J.R. 2676(b). Copies of the Annual Report and Assessment of Fees was also mailed to NJPDES permit holders. The Department held a public hearing on July 25, 1994 at the New Jersey Department of Environmental Protection's Public Hearing Room, in Trenton, New Jersey. Six people attended the public hearing. No oral testimony was presented. Five individuals submitted written comments. The following is a list of those persons that provided written comments concerning the FY94 Annual Fee Report and Fee Schedule, and general comments concerning the fee assessment methodology and the NJPDES program.

Hank Van Handle, Bayway Refining Company
Renee Bobal, Hoffmann-La Roche Inc.
Thomas J. Detweiler, Chemical Industry Council
Arnold Mitnaul, West New York Municipal Utilities Authority
Alfred H. Pagano, DuPont Chemicals

Debra Hammond, Chief of the Bureau of Permit Management, Division of Water Quality, served as the hearing officer at the July 25, 1994 public hearing on the FY94 NJPDES Annual Fee Report and Fee Schedule. After reviewing testimony from the public regarding the Annual Fee Report, Ms. Hammond recommends that the Department adopt the FY94 Annual Fee Report and Fee Schedule as proposed.

A copy of the record of the public hearing that includes the transcript from the public hearing is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Debra Hammond, Bureau Chief
Department of Environmental Protection
Division of Water Quality
401 East State Street
CN 029
Trenton, New Jersey 08625

As discussed in the Annual Fee Report, the Department used the existing fee assessment methodology found at N.J.A.C. 7:14A-1.8 in calculating NJPDES permit fees for FY94. All of the commenters recommended that the Department increase minimum fees for all types of discharge permits based upon the level of effort required to process, monitor and administer that type of permit. Since the Department has not proposed changes to the fee assessment methodology at N.J.A.C. 7:14A-1.8 which set the minimum fee schedule for fiscal year 1994, the Department cannot implement these recommendations and/or changes for the 1993-94 fee schedule.

Several of the commenters expressed disappointment that the Department was unable to implement any of the NJPDES Task Force recommendations for changes to the fee formula during the current fiscal year. Commenters also stated that implementation of those recommendations, particularly a revised minimum fee structure, would rectify many of the inequities that exist in the distribution of fees among the permittees.

Some permittees identified errors in their individual environmental impact calculation and the proposed fee schedule. The Department has corrected those errors. In addition, the Department has reviewed the environmental impact calculations for NJPDES permittees to ensure that fee assessments reflect the calculated environmental impact. The Department has also calculated fees for those facilities that received permits since the publication of the Annual Fee Report. The Department had decided to adopt the rates for each category of discharge as proposed in the Annual Fee Report.

The rates for FY94 are as follows:

Category	Adopted Rate
Municipal Surface Water	.46153
Municipal Ground Water	4569.279734
Residuals	2.617554
Industrial Surface Water	2.28303
Industrial Ground Water	5868.8560
Pretreatment (SIU)	4.87094
Operating Landfills	16.1105
Total	

Summary of Public Comments and Agency Responses

1. COMMENT: For the third consecutive year, monies have been allocated for computer enhancements. The Department will have spent almost $3 million on computer enhancements since 1992. The Authority is disturbed to see this project funded for the third consecutive year. (Arnold S. Mitnaul—West New York Municipal Utilities Authority)

RESPONSE: The Department has actually only funded the "computer enhancement" project during the budget years FY92 and FY94. The total amount allocated to this project was $1.7 million in FY92 and $400,000 in FY94. Of this $2.1 million total, $1.7 million has been funded from penalties collected for the Clean Water Enforcement Fund and $400,000 from NJPDES fees. In addition to the $2.1 million for the new computer system, the Department also pays for operation and maintenance costs for running the system. Computer enhancements were completed in March 1994. The new system expands the Department's ability to analyze violations, and to determine if facilities are in Significant Non-Compliance (SNC) under the Clean Water Enforcement Act. It also allows the Department to enforce mandatory monthly reporting as required by the Clean Water Enforcement Act and to automatically calculate penalties and produce standard penalty invoices. We are continuing to improve the capabilities of the existing programs and streamline data entry operations. Ultimately, this will result in less staff time necessary to process data. We also plan to expand the use of DMR forms to Sludge Quality Assurance Reports (SQAR), rather than redesign the existing system, to take advantage of the existing tracking and non-compliance features already in operation. We also plan to implement the capability to accept electronic submissions in FY95.

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2. COMMENT: The NJPDES Program costs were estimated at $15.3 million for FY94. The Department applied $4.1 million to the NJPDES Program to reduce the total amount assessed through permit fees to $11.2 million. This represents a 26.8 percent reduction in the billing. The distribution of the offsets range from 11.4 percent for the industrial surface water category to 62.1 percent for several of the ground water categories. If the Department reduced each budget category equally by 26.8 percent, the billing rate for the industrial surface water discharge category would be 1.85889, which is approximately 19 percent lower than the proposed rate of 2.28303. This uniform distribution of the offset would provide a more equitable distribution of funds, would keep fees closer to last year's fees and would be more consistent with the Commissioner's goal of a 15 percent fee reduction. (Hank Van Handle-Bayway Refining Company, Renee Bobal-Hoffman-La Roche)

RESPONSE: The Department calculated how to apply the $4.1 million to each category so that the total amount billed for each category was less than the amount of funds billed and/or collected in the previous year. As a result, the maximum fees for all categories of dischargers were less than assessed in FY93. This method of distribution allowed the Department to bill for an amount equal to the previous year's collections, in theory, "a stable fee assessment." An equal distribution of the offset would not have provided for a more equitable distribution of fees nor would it have kept fees at or close to last year's fees. An equal distribution of the offset would not have reduced the maximum fees in some categories and would have significantly increased the rates for the other categories of discharges. Fees for all dischargers except for the industrial surface water permittees would see their fees increase significantly if an equal distribution of the offset were applied as suggested by the commenters.

3. COMMENT: The existing minimum fee of $500.00 is a major contributor to the inequities present in the NJPDES fee program. We are disappointed that the Department had not proposed changes in the minimum fee structure as promised in the FY93 Annual Fee Report and Assessment of Fees and as recommended by the NJPDES Fee Task Force. The Department has estimated that the annual costs to process, monitor and administer a permit is at least $2,500. Therefore, the commentors claimed that 99 of the 220 permittees in the municipal program currently pay less than $1,000. While 514 of the 641 industrial permittees are paying less than the Department's estimated minimum fee of $2,500. The present $500.00 minimum fee represents an annual subsidy from the large fee paying facilities through the environmental impact portion of the fee program. This means the remaining 127 permittes are subsidizing the 514 dischargers minimum fees by more than $1,000,000. It appears that the middle and upper echelons of fee payers are subsidizing the participation of the minimum fee payers in the NJPDES programs and have, in fact, increased their subsidy some instances. (Arnold Mitnaul—WNYMUA, Thomas J. Detweiler—Chemical Industry Council of New Jersey, Hank Van Handle—Bayway Refining Company, Renee Bobal—Hoffman-La Roche, Alfred Pagano—DuPont)

RESPONSE: In FY94, the Department has successfully implemented several changes recommended by the NJPDES Fee Task Force. The most significant change is that for the first time in a number of years State Appropriations ($4.3 million) have been used to reduce the burden on NJPDES fee payers. The Department also held the NJPDES budget and the amount assessed through the NJPDES fee assessment methodology within the amounts recommended by the NJPDES Fee Task Force even though significant salary increases were incurred. The Department has not proposed to modify the existing minimum fee schedule at this time. The Department is still evaluating the proposal to increase minimum fees for some types of NJPDES permits. Any changes to the minimum fee schedule will be completed through the formal rule proposal process allowing for public participation.

4. COMMENT: The overall rate for industrial surface water dischargers has increased by 35 percent. Though the overall budget saw a decrease, if nothing else in the formula has changed from last year, a fee payer in the Industrial Surface Water Program, not at the cap or at the maximum fee, but with the same effluent quality as in FY93, would see an approximate 35 percent increase in the fee. This rate increase appears to impact more heavily on those companies that fall in the middle of the two extremes, namely between the maximum and minimum fee payers. (Thomas J. Detweiler—Chemical Industry Council of New Jersey)

RESPONSE: The commenter is correct in stating that the rate increased from FY93 to FY94 by approximately 35 percent. The rates used to assess permit fees are based on several factors: total environmental impact, the budget or amount to be assessed through permit fees and the number of permittees in the category. Since the Department applied the FY92 rates less five percent in the FY93 Annual Fee Report and Assessment of Fees changes which would have affected the rates in FY93 were not reflected in last year's fees considered. Therefore, this amounts to a 35 percent increase in the rate over a period of two years or approximately 17 percent per year. The FY93 rate was established at the previous year's rate in order to reduce fees for all permittees five percent from their assessment if FY92. The Industrial Surface Water discharge category has experienced significant changes in these factors which together have resulted in an increase in the FY94 rate. The total environmental impact in FY94 decreased 130 percent from 8,723,018 in FY92 to 3,806,507 in FY94. The number of permittees billed went from 891 in FY93 to 641 in FY94 or a 39 percent drop. The reduction in the total amount billed allowed the Department to reduce the maximum fee which went from $700,541 in FY93 to $542,252 in FY94. Since the rate is a cost for each unit of environmental impact, and the total number of environmental impact units was significantly less, the rate had to increase. For these reasons, although the total amount billed is $1.7 million less than in FY93, some fees still increased 35 percent without any increase in pollutant discharge levels.

5. COMMENT: It appears that the Storm Water Permitting Program, although now a separate program, remains in the NJPDES budget and is being subsidized by the Industrial Surface Water NJPDES fee payers by approximately $2 million in FY94. (Thomas J. Detweiler—Chemical Industry Council of New Jersey)

RESPONSE: The Department established a Bureau of Storm Water Permitting to implement Federal EPA regulations under the 1987 amendments to the Clean Water Act. In FY94, the Division of Water Quality transferred 182 permitted facilities to the Office of Land and Water Planning for regulation through the Storm Water Permitting Program. These facilities were previously billed by the Division of Water Quality under the NJPDES Industrial Surface Water discharge category. The Department is not subsidizing Storm Water Program with NJPDES permit fees. Facilities regulated by the Bureau of Storm Water Permitting are being billed in a separate fee report which was published on May 16, 1994. At the time that the FY94 NJPDES Annual Fee Report and Assessment of Fees was published 26 facilities were still listed with the NJPDES Industrial Surface Water program. Although these facilities may be discharging primarily stormwater runoff, the permits have not been transferred to the Bureau of Storm Water Permitting. Until these facilities are transferred they will be billed under the NJPDES Industrial Surface Water category. If these facilities are transferred, they will no longer be billed by the Division of Water Quality. The Industrial Surface Water Category had reduction of 16.45 budgeted work years from FY93 to FY94. A portion of this reduction is related to the transfer of permits to the Bureau of Storm Water Permitting.

6. COMMENT: It would seem appropriate, that the largest contributors of pollution, pay the highest fees, which they presently do. However, their fees are not proportional to the amount of pollution discharged. The 10 percent maximum fee bestows an unfair advantage upon the larger facilities, and punishes the smaller entities. In fact we are subsidizing the major polluters. Passaic Valley Sewerage Commission has discharged 10 times the quantity of pollution at this facility, over the last three years, yet has only paid $600,000 more. It is obvious that the distribution of fee assessments is far from equitable and that it is time for the maximum fee regulation to be repealed. (Arnold S. Mitnaul—West New York Municipal Utilities Authority)

RESPONSE: The Department distributes NJPDES program costs based upon environmental impact in accordance with the formula provided in N.J.A.C. 7:14A-1.8(c) through (g). This use of the maximum fee was upheld by the Appellate Division in *Kearny Municipal Utilities Authority v. New Jersey Department of Environmental Protection.* The Department disagrees with the commenter's statement that the maximum fee causes the smaller facilities to subsidize the larger facilities, bestows an unfair advantage upon the larger facilities and punishes the smaller and/or efficient facilities. The Department feels that facilities are paying their share of the budget as related to their environmental impact.

7. COMMENT: The Department has stated that it has received an appropriation from the State General Funds in the amount of $4.3 million for stabilization of NJPDES fees for FY95 and that this appropriation would allow the Department to maintain the total fees assessed at the FY94 level. This level of funding may not be adequate for the Department to keep fees at their current level or reduce fees

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which we believe is the present goal of the Department. In the FY94 Annual Fee Report, the Department has not indicated how potential reduction in penalties assessed through the Clean Water Enforcement Act may affect the NJPDES program in FY95. The commenters expressed concern about the potential loss of funds for FY95 due to the anticipated decrease in penalties and the impact of the mandated six percent cost of living increases. We urge the Department not to increase fees to make up for this deficit. Restructuring of the NJPDES program and fee assessment methodology in FY95 will be necessary to account for potential revenue shortfalls and to stabilize the program for future years. (Thomas J. Detweiler—Chemical Industry Council of New Jersey, Hank Van Handle—Bayway Refining Company, Renee Bobal—Hoffman-La Roche, Alfred Pagano—DuPont)

RESPONSE: The Department plans to evaluate the impacts of reduced penalty collection, the restructuring of the NJPDES program and changes to the NJPDES fee assessment methodology prior to publishing the FY95 Annual Fee Report, and will take these comments into consideration at that time.

(a)

OFFICE OF AIR QUALITY MANAGEMENT

Notice of CO SIP Technical Change

Take notice that the New Jersey Department of Environmental Protection (the Department) is changing the State Implementation Plan for the Attainment and Maintenance of the Carbon Monoxide National Ambient Air Quality Standards. This revision is a technical update to incorporate the latest planning tools available to the Department.

Written comments will be accepted until the close of business on September 29, 1994. Comments should be submitted to:

Janis Hoagland, Esq.
Attn: CO SIP
DEP Office of Legal Affairs
CN 402
Trenton, New Jersey 08625

This technical change to the New Jersey State Implementation Plan for Carbon Monoxide is being submitted to incorporate the latest planning tools.

On November 15, 1992, the Department submitted a revision to the State Implementation Plan (SIP) for the attainment and maintenance of the carbon monoxide National Ambient Air Quality Standards (CO SIP) to the United States Environmental Protection Agency (USEPA). The purpose of this 1994 revision is to technically update the carbon monoxide SIP to incorporate the most recent planning tools available to the NJDEP. The conclusion remains unchanged, in that the National Ambient Air Quality Standard will be attained by December 31, 1995.

The updated planning tools include: (1) the USEPA Mobile Source Emission Factor Model, MOBILE5a; (2) the latest version of the CAL3QHC line-source dispersion model, version 2.0; and (3) the incorporation of the travel demand model (TDM) for the northern part of the State. The combined application of these updated tools results in an increase in the emission inventory, increased benefits for the control programs, a lower vehicle miles of travel growth rate and a higher predicted concentration at each intersection examined in the attainment demonstration. The impacts at the intersection with the highest predicted concentration changed from a predicted concentration of 8.0 parts per million (ppm) to 8.6 ppm, still below the health standard of 9.0 ppm. The attainment demonstration includes the impacts of the oxygenated fuel program and the enhanced inspection maintenance program.

Additionally, the USEPA rule assuring conformity of transportation plans, programs, and projects requires the metropolitan planning organizations (MPOs) to utilize the latest planning assumptions, including emission estimation techniques. See 40 CFT Part 51 and Part 93, especially Sections 51.412 and 93.111. This SIP revision incorporates the latest planning tools available to the NJDEP, thereby allowing a comparison between the emission calculated for SIP purposes and the emissions calculated for TIP (Transportation Improvement Program) purposes. Without this update, the emission inventories calculated for the two purposes would be based on different methodologies and assumptions.

A copy of the revised carbon monoxide SIP is available for inspection at county libraries in Bergen, Essex, Hudson, Passaic, and Union counties. In addition, it is available for inspection at the Department's public information center located at 401 E. State Street, Trenton, N.J. A copy may also be obtained from the Office of Air Quality Management at (609) 777-1345 or by faxing a request to (609) 633-6198.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on August 18, 1994 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 Northeast Water Quality Management Plan (WQMP) was adopted by the Department. This amendment, originally submitted by Maraziti, Falcon & Gregory on behalf of the Passaic River Basin Alliance, a coalition of wastewater dischargers in the Passaic River Basin, amends the treatment level requirements specified in Table V-15 of the Northeast Water Quality Management Plan (WQMP). This amended table is applicable not only to the dischargers specified in the narrative of Section V.B.5 and/or Table V-17 of the Northeast WQMP, but also to the dischargers which are not specifically identified in the narrative of the WQMP but that have limits based on the Northeast WQMP included in their New Jersey Pollutant Discharge Elimination System (NJPDES) permits. The requirements in the amended Table V-15 shall apply but shall not prohibit the application of other limits where determined to be acceptable based on a water quality study approved by the Department.

Table V-15 of the WQMP is amended as follows:

1. Seasonal Ammonia (NH3)—Dischargers whose permits currently do not have seasonal water quality based effluent limitations for ammonia may request seasonal ammonia effluent limitations. Where there is an approved ammonia toxicity study and sufficient data exists to calculate final water quality based effluent limitations, the final limits will be determined directly. If there is no ammonia toxicity study and if final water quality based effluent limitations can not be determined directly, the permittee may request "temporary winter ammonia" effluent limitations. "Temporary winter ammonia" effluent limitations will be calculated considering: (1) the lower winter temperatures, (2) winter MA7CD10 flow, and (3) historical effluent data. "Temporary winter ammonia" effluent limitations will only be allowed where the permittee agrees to do the ammonia toxicity study needed to determine the final seasonal effluent limitations and where that study and the final report will be completed and submitted by March 15, 1996.

Dischargers to the Passaic River Basin (that is, the Passaic River and any tributary to the Passaic River) above Little Falls (see list) that have temporary or final seasonal ammonia effluent limitations are required to continue to operate all phases of their treatment process (existing facility and equipment), necessary to treat anticipated flows, year round (unless specific units are explicitly exempted by the Department) in order to minimize the amount of ammonia being discharged to the greatest extent practicable, even if less stringent winter season ammonia effluent limitations are incorporated through a final permit action. In addition, any discharger above Little Falls whose discharge affects or may affect a downstream water purveyor's intake, will be required to have an ammonia action level reporting requirement included in their NJPDES/DSW permit. The action level, if exceeded during winter months, will trigger an explanation/analysis of the exceedence in terms of degree of exceedence, reason for exceedence, actions taken to remedy exceedence, and actions needed to prevent similar exceedences in the future. The explanation/ analysis report addressing the previously described items is required to be prepared and submitted for each month during the winter season when a discharger's monthly average effluent ammonia concentration exceeds the specified numerical action level. The list of dischargers above Little Falls includes, but is not limited to, the following dischargers:

1. Wayne Twp., Mt. View—NJ0028002
2. Caldwell Borough—NJ0020427
3. Livingston Twp.—NJ0024511
4. Florham Park—NJ0025518
5. Madison Chatham J.M.—NJ0024937
6. Chatham Twp.—NJ0020290
7. New Providence—NJ0021636 (applies while a continuous discharge facility only)

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8. Berkeley Heights—NJ0027961
9. Morris Twp., Woodland—NJ0024929
10. Bernards Twp.—NJ0022845
11. Lyons Vet. Hosp.—NJ0021083
12. Parsippany-Troy Hills—NJ0024970
13. Hanover Twp.—NJ0024902
14. Morristown—NJ0025496
15. Morris Twp., Butterworth—NJ0024911
16. NJDHS, Graystone Hosp.—NJ0026689
17. Rockaway Valley—NJ0022349
18. Two Bridges SA—NJ0029386
19. Wanaque Valley—NJ0053759
20. Pompton Lakes—NJ0023698
21. Warren Stage I/II—NJ0022489
22. Warren Stage IV—NJ0022497
23. Warren Stage V—NJ0050369
24. Long Hill (Stirling)—NJ0024465

The numerical trigger for action level, requirements will be calculated as discussed in the Department's response to Comment 3 below.

2. CBOD5—A 5 Day Carbonaceous Biochemical Oxygen Demand (CBOD5) requirement is substituted for the 5 Day Biochemical Oxygen Demand (BOD5) requirement at the same concentrations in Table V-15.

3. CBODu and NBODu—Ultimated Carbonaceous Biochemical Oxygen Demand (CBODu) and Ultimate Nitrogeneous Biochemical Oxygen Demand (NBODu) are deleted as treatment level requirements from Table V-15.

4. TSS—The Total Suspended Solids (TSS) requirement in Table V-15 is amended to indicate that the water quality based effluent limit or secondary treatment (30 mg/L monthly average and 45 mg/L weekly average), whichever is more stringent, will apply.

The amendment proposal was noticed in the New Jersey Register on February 7, 1994 at 26 N.J.R. 859(a). Comments on the amendment were received during the public comment period. The adopted amendment, as represented above and in the amended Table V-15, includes changes that were made to the amendment proposal as noticed in the New Jersey Register based on the comments received during the public comment period.

Comments on this amendment were received from the Passaic River Basin Alliance (PRBA), North Jersey District Water Supply Commission (NJDWSC), Hackensack Water Company (HWC), Passaic Valley Water Commission (PVWC), the Passaic River Coalition (PRC), and the Hanover Sewerage Authority (HSA). The comments are summarized below with the Department's responses.

TKN

—The amendment proposal noticed in the February 7, 1994 New Jersey Register specified substitution of TKN for NJ3-N as a treatment level requirement in Table V-15, with an exception for direct dischargers to the mainstem Dead River and the mainstem Passaic River to the end of the freshwater portion at Dundee Dam which were addressed by the Department's Passaic River Water Quality Management Study (Passaic River Study).

1. COMMENT: **TKN Limitations**—The PRBA contests the Department's establishment of TKN limitations which have not been based upon a specific water quality study or model expressly employing TKN. Instead, a TKN limitation could be inserted in only those permits where the limitation is justified by water quality studies or models based upon TKN, and the permit references that model or study.

The NJDWSC, HWC and PRC also objected to the specification of TKN instead of NJ3-N. The HWC stated that NJ3-N is easier to measure and is usually measured by water suppliers, so comparable data are available. The PRC commented that TKN is a less reliable measure of reduced nitrogen compounds and their toxicity than NJ3-N.

The NJDWSC commented that TKN is less specific than NJ3-N and, therefore, not an adequate method for determining ammonia concentrations. On a given day, wastewater treatment plant nitrification could be incomplete and TKN would not identify what portion of the discharge was ammonia nitrogen. When this ammonia left the wastewater plant, it could become oxidized instream creating nitrites which could be toxic to fish and other aquatic species. From a water treatment perspective, unreacted ammonia could also result in higher nitrate levels, greater oxidant demands (which equate to higher treatment costs), taste and odor problems and higher disinfection by-products.

RESPONSE: The Department has decided that the TKN/NJ3-N issue will not be addressed by substitution of TKN for NH3-N in Table V-15 of the Northeast WQMP. Table V-15 will continue to specify NH3-N as a treatment level requirement. However, the TKN/NH3-N issue is not being eliminated from the Department's agenda of items that need additional scrutiny. The TKN/NH3-N issue will be required to be addressed in the future in water quality studies done by individual facilities (when such studies are performed) and/or as part of the Department's ongoing watershed initiative. A footnote has been added to Table V-15 which states the following: "In cases where a discharger has both TKN and NH3-N effluent limitations, and the Department determines that they are duplicative, the effluent limitations for one of the two parameters will be removed from the permit. If it is determined that both are necessary, then both will be retained. In cases where a discharger has no TKN effluent limitation and the Department determines that one is necessary, an effluent limitation for TKN will be included in the permit."

2. COMMENT: According to "Standard Methods for the Examination of Water and Wastewater," nitrates can cause negative interferences in TKN analyses and organic matter can result in positive interferences.

RESPONSE: Standard Methods states that the conditions under which significant interferences occur are not well defined, and there is no proven way to eliminate the interference in conjunction with the Standards Method organic nitrogen procedure. Recognizing the imperfections of the Kjeldahl test, the Department has determined that the issue of the requirement of a TKN limitation in cases where hydrolysis of organic nitrogen is occurring instream will need to be addressed in the future, in water quality studies done by individual facilities and/or as part of the Department's ongoing watershed initiative.

Seasonal NH3-N

—The amendment proposal noticed in the New Jersey Register proposed allowing seasonal NH3-N limits based on the outcome of an ammonia toxicity study for each discharger to determine the required wintertime limitations, and the requirement that the summer ammonia requirements in Table V-15 protect against the toxic effects of ammonia.

3. COMMENT: **Seasonal NH3-N Limitations**—The PRBA opposes the Department's reluctance to modify the winter ammonia limitations until an ammonia toxicity effluent limitation has been determined. The PRBA argues that the winter NH3-N limitation of two mg/L (30 day average) is inappropriate and without a legal or technical basis, and that the Department is ignoring the conclusions in the Passaic River study which the PRBA states established final point source effluent limitations for NH3-N based on both the D.O. projection and ammonia toxicity analysis (Pg. VIII-3 and Table VIII-1 of the Study). The PRBA therefore requests immediate relief of this limitation to one which is legally and technically justifiable, such as 10 mg/L (level 2 treatment), at least on an interim basis, until site specific studies are conducted where needed.

The NJDWSC and the PVWC commented that seasonal NH3-N limitations are unacceptable to the water purveyors and could cost the water utility a good deal of money for remedial treatment because NH3-N is an indication of compounds which will require more treatment and can lead to taste and odor problems. In addition, any increase in NH3-N effluent limits (that is, reduced stringency) for winter limits should be based on temperature values and not on the calendar as an indicator of temperature.

The HWC commented that the PRBA did not present any research on the effects of ammonia on the water supplies downstream of the Publicly Owned Treatment Works (POTW) discharges. Their concerns were only related to the aquatic life impact. The NH3-N limits should not be modified until the impact on the downstream water supplies are evaluated.

RESPONSE: The Department recognizes the unique situation that exists regarding the use of Passaic Basin waters as both a critical water supply source and an effluent dominated receiving waterbody. It is therefore the goal of the Department not only to ensure that water quality standards for aquatic life are achieved in surface waters within the basin, but also, in order to protect the potable water designated use, to reduce if possible, or at minimum maintain, existing instream ammonia and nitrate levels. This requires that special conditions be placed on dischargers whose effluent affects the water source of potable water purveyors.

The Department will propose as NJDPES permit requirements "site specific seasonal ammonia toxicity study based" or "temporary seasonal ammonia" effluent limitations for facilities with existing year-round, single value, non-water quality based winter season ammonia effluent limits provided that:

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1. The "temporary winter ammonia" effluent limitations may not be less stringent than 10 mg/L as a 30-day average.

2. The permittee provides the information needed to develop the "site specific seasonal ammonia toxicity study based" or "temporary site specific" seasonal ammonia effluent limitations. For "temporary seasonal ammonia" effluent limitations, the required information includes, but is not limited to:

a. Effluent pH and temperature data.

b. USGS certified summer and winter MA7CD10 flows for the receiving stream just upstream of the outfall.

c. Other information as needed to do a mixing analysis. This includes, but may not be limited to, the following physical conditions at the outfall under the applicable MA7CD10 flow conditions.

(1) receiving stream width
(2) receiving stream depth
(3) receiving stream velocity
(4) receiving stream slope

3. Where "temporary seasonal ammonia" effluent limitations are requested, the permittee must agree to do a complete and acceptable ammonia toxicity study during calendar year 1995, including a work plan, which addresses both summer and winter season ammonia toxicity concerns. The final report shall be submitted on or before March 15, 1996.

4. If the permittee has been identified as a discharger that affects, or has the potential to affect, an existing or planned downstream water purveyor (see footnote * in Table V-15 of the amended plan), said permittee will comply with any requirements that address potable water use issues, including any operational standard and/or action level notification requirements that are contained in the NJPDES/DSW permit.

5. The permittees included under item 4 above will be required to continue to operate all phases of their treatment process (existing facility and equipment), necessary to treat anticipated flows, year round (unless specific units are explicity exempted by the Department) in order to minimize the amount of ammonia being discharged to the greatest extent practicable, even if less stringent winter season ammonia effluent limitations are incorporated through a final permit action.

6. The permits of dischargers included under item 4 above will contain action level reporting requirements. The numerical trigger for action level requirements will be calculated using item a, b, or c below, whichever is applicable. The baseline ammonia concentration effluent limitations are those that were in effect in a final permit before the adoption date of this plan amendment. The action level, if exceeded during winter months, will trigger an explanation/analysis of the exceedence in terms of degree of exceedence, reason for exceedence, actions taken to remedy exceedence, and actions needed to prevent similar exceedences in the future. The explanation/analysis report addressing the previously described items is required to be prepared and submitted for each month during the winter season when a discharger's monthly average effluent ammonia concentration exceeds the specified numerical action level.

a. For dischargers whose effluent is normally in compliance with the existing non-water quality based winter period ammonia effluent limitation that is in effect at the time this plan amendment is adopted, the action level will be calculated as 1.5 times the existing monthly average winter period baseline ammonia effluent limitation.

b. For dischargers whose effluent has consistently been in non-compliance with the existing non-water quality based winter period ammonia effluent limitation that is in effect at the time this plan amendment is adopted, the action level will be calculated as 1.5 times the existing effluent quality monthly average winter period ammonia effluent data as reported on the discharger's applicable previous winter period DMRs. For purposes of defining the numerical action level only, monthly average existing effluent quality will be the highest winter season monthly average effluent value for ammonia concentration reported on the discharger's applicable DMR's during a normal operating month. A normal operating month would not include periods of excessive storm flows, periods of equipment or treatment unit breakdown, etc. which result in monthly average values much greater than those that would otherwise have been expected.

c. For dischargers that have final water quality based (includes only those cases where ammonia toxicity has been adequately addressed) seasonal ammonia effluent limitations in effect at the time this plan amendment is adopted will remain unchanged and an action level will not be required as the regulations that address violations of permit limitations are sufficient.

If, at a future date, an acceptable demonstration is made to the Department which justifies recalculating a facility's numerical trigger value, then the Department may propose such a recalculated value subject to the following conditions.

a. The recalculated value should be endorsed by both the facility owner/operator and all affected or potentially affected water purveyors.

b. The recalculated value must not cause a significant impact to any downstream water purveyor.

c. Water quality issues must be addressed by the facility owner/operator where appropriate.

All operational and action level requirements that are incorporated into permits based on the requirements of this plan amendment, will be retained in those permits (and subsequent permits) until such time as the water quality issues relating to potable water supply have been addressed either through new water quality criteria and new effluent limitations, a subsequent plan amendment, or other applicable Department rule making.

The request that the time period during which winter season ammonia effluent limitations are effective be based solely on temperature as opposed to being based on the calendar as an indicator of temperature, while it has its merit, is not practical from either a permitting or enforcement perspective. Limitations based on other than set design conditions, e.g., infinitely variable effluent limitations, have been requested by permittees for ammonia, as well as other parameters, but are always denied as they would not be in compliance with existing regulations and the monitoring requirements and costs associated with such limitations would be prohibitive. The calendar approach has been found to be conservative enough to ensure that water quality standards are not violated. The default summer period (season) is from May 1 through October 31 and the default winter period is from November 1 through April 30. Upon request, the Department will consider regrouping the months in the two seasons whereby a single contiguous month is moved from one season to another, but the Department will not consider establishing any more than two distinct seasons.

4. COMMENT: The HWC does not believe an aquatic toxicity test is required of each POTW discharge, particularly since there is no aquatic problem in the cold weather. The ammonia that affects a water supplier can be done by gathering the ammonia data from both the water supplies and the POTWs and calculating the stream loadings.

RESPONSE: Assuming that there is no toxicity problem in winter without sufficient data is flawed which is why wintertime, site-specific ammonia toxicity studies will be required. It would not be possible to determine stream ammonia loadings just from water supply and POTW data if nitrification were occurring in the stream. This would be a dynamic situation requiring the use of a model.

5. COMMENT: In regard to the Department's requirements that the summer NH3-N limits protect against the toxic effects of ammonia, the NJDWSC commented that even if this were practical, it would not account for the additional costs incurred by the water utility for additional oxidants (chlorine, KMnO4) and for taste and odor control (PAC, GAC); because the toxic effects are only part of the picture.

In addition, the PRC commented that it is inappropriate to place the burden of proving tha the summer NH3-N limits protect against the toxic effects of NH3-N on any discharger. Instead, the PRC supports having the Department undertake an "ammonia toxicity study". In addition, the PRC believes that there is sufficient available information for reasonable judgements to be made regarding ammonia limitations based on temperature. Such judgements should be made as soon as possible.

RESPONSE: As indicated above, ammonia toxicity studies must be conducted on a site-specific versus regional basis and are best done by the dischargers themselves. While the Department is in the process of converting to a watershed scale approach to monitoring, site specific studies will still be needed. It is the Department's intention to work towards more closely linking water supply issues with the NJPDES permitting process and to more adequately address these issues through quality based effluent limitations, water quality criteria, and water quality modeling.

6. COMMENT: The HSA commented that Table V-16 from the Northeast WQMP contains a note which indicates that the NH3-N limitations in the WQMP are not necessary during winter months. Accordingly, the limitations contained in the WQMP should not have been used in setting year round permit conditions. The Department should eliminate winter NH3-N limits until such time as studies indicating a more stringent limitation is needed are completed.

RESPONSE: The note to Table V-16 also states that "The NH3-N ... criteria will not be required from November 1 to April 30 unless their removal is necessary to meet water quality standards." Whether

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or not removal of NH3-N is necessary during the winter months is required to be determined by means of site-specific ammonia toxicity studies. As discussed above, the Department will not eliminate winter ammonia limits, but will propose appropriate temporary winter limits where justified until the required studies are completed.

CBOD5

—The following are comments regarding the proposal noticed in the New Jersey Register to substitute CBOD5 for BOD5 at the same concentrations in Table V-15.

7. COMMENT: **CBOD5**—The NJDWSC commented that while the CBOD5 test is an accurate tool in apprising the efficiency of BOD removal in an STP process, it has serious drawbacks when assessing the impact of nitrogenous BOD on its receiving water. The BOD5 test is more suitable to assess changes in water quality in the receiving stream below the point of discharge. Therefore, it should be included in the permit as a regulatory requirement without a level-related penalty provision.

RESPONSE: The requirement of the BOD5 test in addition to the CBOD5 test is not necessary since the CBOD5 test will address he carbonaceous BOD while the ammonia analyst addresses the nitrogenous BOD.

CBODu & NBODu

—The following are comments regarding the proposal noticed in the New Jersey Register to delete CBODu and NBODu as treatment level requirements in Table V-15.

8. COMMENT: **CBODu and NBODu**—The NJDWSC commented that CBODu and NBODu are critical indicators of the ultimate impact of wastewater effluents on water quality in the receiving waters downstream of discharge points. Therefore, these parameters should continue to be permit requirements. What should be changed are the penalty provisions which result in multiple violations.

RESPONSE: CBODu and NBODu are not necessary as long as there are limits for CBOD5 and ammonia. An internal conversion is performed in water quality modeling so that the ultimate impact of the nitrogenous and carbonaceous water is accounted for.

Seasonal CBOD5

9. COMMENT: **Seasonal CBOD5**—The PRBA's original proposal requested that the Department amend the revised Table V-15 to specify water quality based seasonal limitations for CBOD5 equal to 16 mg/L, which the PRBA indicates is specified in the Passaic River Study as a limit which would not cause water quality violations under winter conditions. If the Department, in the future, finds it necessary to collect more site specific data concerning CBOD5, future NJPDES permits can reflect such needs. It is possible, however, that the Department already possesses sufficient data regarding CBOD5 to model every point source discharger on the Passaic River.

RESPONSE: The Department is not prepared to propose seasonal CBOD5 as part of this amendment. Winter conditions with regard to CBOD5 were evaluated to some extent in the Passaic River Study, however, this was considered as a sensitivity analysis as these limits were not recommended in the Study. The Passaic River Water Quality Model would have to be used to stimulate these conditions to determine suitable levels. Such an analysis would have to include antidegradation and reserve capacity analyses. This type of analysis could appropriately be done as part of the Department's efforts towards watershed based planning and permitting.

TSS

—The following are comments regarding the proposal noticed in the New Jersey Register to change TSS requirements in Table V-15 to indicate that the water quality based limit or secondary treatment (30 mg/L monthly average and 45 mg/L weekly average), whichever is more stringent, would apply.

10. COMMENT: **TSS**—The NJDWSC commented that there is no substantiation for lowering the stringency of TSS limits, therefore, any change would fundamentally degrade water quality and this is not in accordance with a policy of antibacksliding and antidegradation as mandated. Without a technical basis for lowering the TSS limitations, the matter cannot be fully assessed and requires further discussion and input from both sides.

RESPONSE: The basis for allowing a lowering of TSS limits is that the treatment level requirements for TSS originally specified in the Northeast WQMP were not water quality based, they were instead set consistent with the BOD5 limits with the basis that if the BOD5 requirement was met, the TSS requirement would also be addressed. This amendment updates and corrects the Northeast WQMP to specify that the TSS limits will be set based on the minimum Federal treatment standards (40 C.F.R. Part 133.102) unless water quality modeling demonstrates the need for more stringent requirements. Since the determination of TSS limits will be based upon meeting water quality criteria, this proposal is not inconsistent with the policies of antidegradation and antibacksliding.

The proposed change to the existing TSS requirements will still ensure compliance with the surface water quality standards. In addition, while the TSS effluent limitations may be made less stringent, the Department does not anticipate that there will be any significant increase in the concentration of TSS in the receiving waters due to the fact that the limitations for other parameters that directly affect the concentration of TSS that can be discharged (for example, CBOD5) are not being made less stringent.

11. COMMENT: The PRC commented that the wording of the proposal in regard to TSS is not clear and suggested the following wording: "For all treatment levels in Table V-15, the criteria for suspended solids be 30 mg/L as a 30 day average and 45 mg/L as a 7 day average."

RESPONSE: The above wording is not appropriate because it does not specify that limits for suspended solids will be based on water quality criteria or secondary treatment (30 mg/L as a monthly average and 45 mg/L as a seven day average) whichever is more stringent. The minimum treatment standards for TSS (secondary treatment) and the surface water quality standards for TSS (N.J.A.C. 7:9B) are not the same and are not numerically equivalent, therefore, both must be considered and complied with when determining the appropriate effluent limitations to be included in a permit.

D.O.

—The following are comments regarding PRBA's July 2, 1993 proposal for D.O. limitations consistent with applicable water quality standards, and the revised proposal as noticed in the New Jersey Register.

12. COMMENT: **D.O. Limitations**—The PRBA contests the Department's decision to impose a D.O. requirement of 6.0 mg/L due to the fact that this limitation is not supported by either the WQMP or the Passaic River Study. Consequently, there exists no technical or legal basis to require limits which are more stringent than applicable water quality standards. Water quality standards provide for a daily average of five mg/L (four mg/L at any time) for non-trout waters, and six mg/L (five mg/L at any time) for trout maintenance waters. Imposing a D.O. effluent limit of 5.0 mg/L rather than 6.0 mg/L for discharges in the Passaic River Basin will have an inconsequential effect on the total D.O. deficit calculated by the Department.

The HWC agrees with the PRBA that D.O. limitations should be consistent with applicable water quality standards based on D.O. data for the Passaic River.

The NJDWSC comments that D.O. is of primary concern because the NJWSC's water allocation permit for Two Bridges pumping requires that the D.O. levels be maintained at a 24-hour average of no less than 5.0 mg/L. From a practical standpoint, there must be some margin between the wastewater discharger's requirements and the water supply diverter's requirements. One mg/L seems to be a reasonable margin.

RESPONSE: The technical basis of the imposition of a D.O. requirement of 6.0 mg/L is based on the water quality modeling background data which was used in the Passaic River Study. The requirement is necessary to maintain the proper D.O., meeting the water quality criteria in the critical sag area (not at the discharge point), in the Passaic system. Therefore, there is an indirect rather than a direct relationship to the applicable water quality standard. Table V-15 has not been revised to reflect this requested change to the D.O. limitation.

Seasonal D.O.

—The following are comments regarding the PRBC's July 2, 1993 proposal for seasonal D.O. limitations, and the revised proposal as noticed in the New Jersey Register.

13. COMMENT: **Seasonal D.O. Limitations**—The PRBA contends that at a minimum, the effluent limitations for D.O. should be relaxed during the winter period in accordance with the conclusion of the Passaic River Study.

The NJDWSC commented that consideration might be given to raising the D.O. levels solely during the cold weather but only in relationship to actual occurring temperatures, not the time of the year. The water

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supply diverter's limits must be raised correspondingly to maintain the one mg/L margin. Whether or not these levels can be raised without adversely affecting the quality of dependent water supplies in the basin can only be addressed through a comprehensive study based on prevailing conditions. It would be up to the study to prove to the water suppliers that permitting a relaxation in the D.O.levels during certain low temperature periods would not cause any significant reduction in water quality.

RESPONSE: Although an effluent D.O. of five mg/L was used in a winter simulation as reported in the Passaic River Study, this was done as a sensitivity analysis, and the results were not part of the conclusions and recommendations of the report. Also, this analysis did not include a reserve capacity or antidegradation evaluation. Since an effluent D.O. concentration of six mg/L is not an unreasonable level of wastewater treatment plants to achieve, especially in the winter, and to relax this limit may have negative water supply impacts, the Department is not considering any changes.

Additional Comments

14. COMMENT: The PVWC is concerned that the amendment will adversely impact delivered water quality. The NJDWSC commented that the amendment will hold dischargers less accountable for their effluent contaminants, which is in direct opposition to the Federal policy of antibacksliding and antidegradation.

RESPONSE: The Department is also concerned with maintaining the quality of the water for water supplies, and has included specific provisions and requirements in the adopted plan amendment to maintain water quality as currently allowed for by NJPDES permits. Any specific antibacksliding or antidegradation issues which arise from this plan amendment will need to be addressed through the permitting process.

15. COMMENT: The HWC commented that the Northeast WQMP should be coordinated with the "New Jersey Statewide Water Supply Master Plan" in order to begin the planning process for watershed based planning. River monitoring data should be collected for long term planning purposes, instead of just doing "sensitivity" studies every five or 10 years. Water suppliers have been collecting raw water data for years yet the Department has no adequate depository for this valuable information.

RESPONSE: As part of the WQMP process, the Department has begun to address various water supply concerns which arise based on wastewater treatment and disposal proposals. The Department intends to continue this effort, including coordination with the "New Jersey Statewide Water Supply Master Plan," as part of the watershed based planning process.

In regard to river monitoring data, the data collected from short term, intensive surveys is needed by the Department for modeling and will continue to be needed as part of the watershed based planning process. Although the Department does not have an adequate depository for raw water data collected by the water suppliers, the STORET system, a nationwide water quality data bank for the storage and retrieval of data, may be an appropriate depository for this information. STORET is used on a regular basis by those interested in water quality analysis.

16. COMMENT: The PRBA commented that it is the Department's contention that the limitations established in the Northeast WQMP and this amendment will only apply to those dischargers listed in Table V-17 and/or Section V.B.5 of the WQMP, however, these limits have been applied to many permits which are not expressly listed in the aforementioned table. The Department must either delete the reference to the WQMP in those permits which are not specifically listed in the aforementioned table, or apply the limitations and conditions expressed in the WQMP to all permits which reference the Northeast WQMP.

RESPONSE: Based on the above comment, this amendment has been modified to specify that Table V-15 is applicable not only to the dischargers that are specified in the narrative of Section V.B.5 and/or Table V-17 of the Northeast WQMP, but also to the dischargers which are not specifically identified in the narrative of the WQMP but that have limits based on the Northeast WQMP included in their NJPDES permits.

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Food Stamp Program

Notice of Food Stamp Income Eligibility, Deduction, and Coupon Allotment Standards, October 1, 1994 through September 30, 1995

Take notice that, in accordance with N.J.A.C. 10:87-12, the Department of Human Services announces the following food stamp income eligibility, deduction, and coupon allotment standards shall be utilized in the New Jersey Food Stamp Program for the period October 1, 1994 through September 30, 1995. This change is effective October 1, 1994, with the exception of the Shelter Deduction (N.J.A.C. 10:87-12.1(b)), which became effective on July 1, 1994 in order to comply with P.L. 103-66.

Table I
Income Deductions

Standard Deduction (N.J.A.C. 10:87-12.1(a))	$134.00
Shelter Deduction (N.J.A.C. 10:87-12.1(b)) (Effective July 1, 1994)	$231.00
Uniform Telephone Allowance (UTA) (N.J.A.C. 10:87-12.1(c))	$ 19.00
Standard Utility Allowance (SUA) (N.J.A.C. 10:87-12.1(d))	$129.00
Heating Utility Allowance (HUA) (N.J.A.C. 10:87-12.1(e))	$209.00
Homeless Shelter Allowance (HSA) (N.J.A.C. 10:87-12.1(f))	$139.00

TABLE II
Maximum Coupon Allotment (MCA)
(N.J.A.C. 10:87-12.2)

Household Size	MCA
1	$115.00
2	212.00
3	304.00
4	386.00
5	459.00
6	550.00
7	608.00
8	695.00
Each Additional Member	+87.00

TABLE III
Maximum Allowable Net Income
(N.J.A.C. 10:87-12.3)

Household Size	Maximum Allowable Income
1	$ 614.00
2	820.00
3	1,027.00
4	1,234.00
5	1,440.00
6	1,647.00
7	1,854.00
8	2,060.00
Each Additional Member	+207.00

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TABLE IV
Maximum Allowable Gross Income
(N.J.A.C 10:87-12.4)

Household Size	Maximum Allowable Income
1	$ 798.00
2	1,066.00
3	1,335.00
4	1,604.00
5	1,872.00
6	2,141.00
7	2,410.00
8	2,678.00
Each Additional Member	+269.00

TABLE VII
165 Percent of Poverty Level
(N.J.A.C. 10:87-12.7)

Household Size	Maximum Allowable Income
1	$1,012.00
2	1,353.00
3	1,694.00
4	2,035.00
5	2,376.00
6	2,717.00
7	3,058.00
8	3,399.00
Each Additional Member	+341.00

(a)

THE COMMISSIONER

Notice of Availability of Grant Funds Community Challenge Grants under the Department of Human Services' Minority Males Initiative

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Department of Human Services hereby announces the availability of the following grant program funds:

A. **Name of program:** Community Challenge Grant Program for Minority Males.

B. **Purpose:** The purpose for which these grants are issued is to fund new projects which address the multitude of health, human service, and economic problems afflicting minority males in New Jersey. Specifically, grant funds must be used as start-up money to develop and support activities meeting one of the following goals: family unity; prevent or remedy health conditions in minority males; encourage young men to stay in school and to reach their full potential; prepare the workforce for the technical skills that will be needed in the future; and/or reduce the likelihood that young men will become involved in the criminal justice system. Projects should seek opportunities to empower communities and local organizations to be active participants in creating solutions to the health, human service and economic problems afflicting minority males in New Jersey. Grant funds may be used for personnel, equipment, supplies, domestic travel, and other costs directly related to the project described in the approved application. Funds may not be used for construction of facilities, including additions and extensions, or for the acquisition of land. In addition, funds may not be used to expand existing programs and/or support an existing ongoing agency activity.

C. **Amount of available funding for each project:** Current funds available equal $200,000. One time only grants of up to a maximum of $10,000 will be awarded to eligible agencies and organizations for the period January 1, 1995 to June 30, 1995.

D. **Organizations which may apply for funding under this program:** Agencies must be New Jersey based not-for-profit organizations. Eligible applicants may be community coalitions. The applicant is responsible for the management of the project and will serve as the fiscal agent for funds awarded by the state.

E. **Qualifications for receipt of funding under this program:** Through written proposals, agencies must demonstrate the capacity to carry out the purposes of the grant, and evaluate the success of their program or activity. Applicants must demonstrate their ability to develop and implement a new innovative project in the community that can provide support to high risk minority males, or foster community solutions to the complex range of problems facing minority males.

F. **Procedure for eligible organizations to apply:** Agencies may request a copy of the Community Challenge Grant Application in writing from the Office of the Associate Commissioner, New Jersey Department of Human Services, CN 700, Trenton, New Jersey 08625 or via telephone by calling the office at 609/984-7262.

G. **Address to which applications must be submitted:**
Larry J. Lockhart
Associate Commissioner
New Jersey Department of Human Services
Capital Place One, 5th Floor
CN 700
Trenton, NJ 08625
Attn: Pat Holsneck

H. **Deadline by which applications must be submitted:** 4:30 P.M. on October 19, 1994.

I. **Date the applicant is to be notified of acceptance:** No later than December 9, 1994.

J. **Date the applicant is to be notified of rejection:** No later than December 30, 1994.

OTHER AGENCIES

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of the Availability of the Quarterly Report of Legislative Agents for the Second Quarter of 1994, Ending June 30, 1994

Take notice that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission, in compliance with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the second quarter of 1994, accompanied by a Summary of the Quarterly Report.

At the conclusion of the second quarter of 1994, the Notices of Representation filed with this office reflect that 581 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation and regulation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative agents for the second calendar quarter of 1994, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Election Law Enforcement Commission, the Office of Legislative Services, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

- The names of registered Agents, their registration numbers, their business addresses and whom they represent.
- A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.
- A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the second calendar quarter of 1994:

No. 677-2 Herbert Rinaldi representing Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein
No. 920-1 William Burton representing Bower & Gardner
No. 921-1 Kimm Tynan representing NJ Citizen Action
No. 22-10 David Kalm representing LeBoeuf, Lamb, Greene & MacRae

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No. 566-5 Martin C. Rothfelder representing McManimon & Scotland
No. 364-2 Jan Alan Brody representing Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein
No. 922-1 Walter R. Bliss representing Alliance of American Insurers
No. 923-1 Geoffrey Connor representing Reed, Smith, Shaw & McClay
No. 924-1 Harvey Johnson representing Cogen Technologies
No. 925-1 Marlene Asselta representing Southern NJ Development Council
No. 147-3 Curtis Macysyn representing National Federation of Independent Business
No. 665-3 Heidi K. T. Wicks representing Building Contractors Assoc. of NJ
No. 650-2 Benedict Lee representing The American Legion, Dept. of NJ
No. 150-2 Mark Herr representing Cohen, Shapiro, Polisher, Shiekman & Cohen
No. 150-3 Christina Woodward Strong representing Cohen, Shapiro, Polisher, Shiekman & Cohen
No. 75-8 Christine Kolodij representing The Marcus Group, Inc.
No. 21-13 Judith Peoples representing NJ School Boards Association
No. 721-3 Beverly Lynch representing Martin Bontempo Inc.
No. 583-12 Carl Zeitz representing Policy Management & Communications, Inc.
No. 583-13 James Weinstein representing Policy Management & Communications, Inc.
No. 926-1 Timothy Lee representing NJ Taxicab & Livery Assn.; Lee Allen & Associates
No. 737-3 Dana Joel representing NJ Citizens for a Sound Economy
No. 692-2 Bernard Flynn representing NJ Manufacturers Insurance Co. & NJ Reinsurance Company
No. 927-1 Jack Prather representing The Prather Group
No. 845-3 Kevin Monaco representing Utility & Transportation Contractors Assoc.
No. 928-1 Steven Gabel representing Independent Energy Producers of NJ
No. 929-1 Angela Mazza representing Monmouth County Association of Realtors
No. 930-1 Insok Yoo representing The Federation of Korean-American Association in NJ
No. 931-1 Robert Silberg representing Merck & Co., Inc., Human Health Division

Following is a listing of all Legislative Agents who have filed Notices of Termination during the second calendar quarter of 1994.

Legislative Agent	Registration Number
Ronald Brown	766-3
Thomas Carver	2-1
James Cecchi	364-1
Elizabeth Ebersold	128-1
Leonard Fishman	478-1
David Friedman	804-1
Michael Haydinger	845-2
David Kehler	59-1
Linda Kellner	583-6
Anna Lustenberg	632-1
Curtis S. Macysyn	85-2
Charles Archer Mowll	10-4
William Murtha	2-3
Linda Pacotti	616-1
Deborah Poritz	144-6
Peter Shuchter	913-1
David Schwartz	865-1
Stephen Wiley	880-1

For further information, contact the staff of the Commission at (609) 292-8700.

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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 August 1, 1994 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.1994 d.1 means the first rule filed for 1994.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JULY 18, 1994

NEXT UPDATE: SUPPLEMENT AUGUST 15, 1994

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
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993	26 N.J.R. 1739 and 1904	May 2, 1994
25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
25 N.J.R. 4981 and 5382	November 15, 1993	26 N.J.R. 2167 and 2510	June 6, 1994
25 N.J.R. 5383 and 5728	December 6, 1993	26 N.J.R. 2511 and 2692	June 20, 1994
25 N.J.R. 5729 and 6084	December 20, 1993	26 N.J.R. 2693 and 2828	July 5, 1994
26 N.J.R. 1 and 280	January 3, 1994	26 N.J.R. 2829 and 3102	July 18, 1994
26 N.J.R. 281 and 520	January 18, 1994	26 N.J.R. 3103 and 3230	August 1, 1994
26 N.J.R. 521 and 878	February 7, 1994	26 N.J.R. 3231 and 3504	August 15, 1994
26 N.J.R. 879 and 1178	February 22, 1994	26 N.J.R. 3505 and 3780	September 6, 1994
26 N.J.R. 1179 and 1272	March 7, 1994	26 N.J.R. 3781 and 3916	September 19, 1994

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:10-1.1, 14.2, 14.3	Family Development hearings: reproposal	26 N.J.R. 1744(b)	R.1994 d.417	26 N.J.R. 3441(a)
1:12	Department of Labor hearings	26 N.J.R. 2174(a)	R.1994 d.406	26 N.J.R. 3154(a)
1:12A	Department of Labor hearings	26 N.J.R. 2174(a)	R.1994 d.406	26 N.J.R. 3154(a)
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
1:14-10	Board of Regulatory Commissioners ratemaking hearings: discovery	26 N.J.R. 2513(a)	R.1994 d.451	26 N.J.R. 3705(a)
	Most recent update to Title 1: TRANSMITTAL 1994-3 (supplement June 20, 1994)			
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importation	26 N.J.R. 1908(a)	R.1994 d.399	26 N.J.R. 3159(a)
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:71-2.2, 2.4, 2.5, 2.6	Jersey Fresh Quality Grading Program: cut flowers, fresh market tomatoes	26 N.J.R. 2831(a)	R.1994 d.485	26 N.J.R. 3828(a)
2:76	Agriculture Development Committee	26 N.J.R. 1419(a)	R.1994 d.393	26 N.J.R. 3159(b)
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
	Most recent update to Title 2: TRANSMITTAL 1994-4 (supplement June 20, 1994)			
BANKING—TITLE 3				
3:1-4.5	Governmental unit deposit protection: public funds exceeding 75 percent of capital funds	26 N.J.R. 2832(a)		
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-16.2, 16.5	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)		
3:2-1.4	Mortgage commitments, lender advertising and licensure, surety bond amounts	26 N.J.R. 3234(a)		
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)	R.1994 d.397	26 N.J.R. 3163(a)
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)	R.1994 d.397	26 N.J.R. 3163(a)
3:22	Insurance premium finance companies	26 N.J.R. 2697(a)		
3:33	Acquisitions by out-of-State entities: application requirements	26 N.J.R. 3235(a)		
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
	Most recent update to Title 3: TRANSMITTAL 1994-5 (supplement July 18, 1994)			
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:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment	26 N.J.R. 3507(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-3.1	Performance evaluations	26 N.J.R. 3509(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.6	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-1.10	Personnel action freezes	26 N.J.R. 3510(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.15, 5.2	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-4.8	Non-selection of eligible in same rank	26 N.J.R. 2697(b)		
4A:6-1.1, 1.3, 1.6, 1.8, 1.10, 1.21, 1.21B, App.	Family and medical leave	26 N.J.R. 3511(a)		
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:6-5.3	Performance evaluations	26 N.J.R. 3509(a)		
4A:7-1.3, 3.3, 3.4	Sexual harassment	26 N.J.R. 3507(a)		
4A:8	Layoffs	26 N.J.R. 3518(a)		
4A:8-2.1	Layoff rights	26 N.J.R. 2182(a)	R.1994 d.441	26 N.J.R. 3705(b)
4A:8-2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:8-2.4	Family and medical leave	26 N.J.R. 3511(a)		

Most recent update to Title 4A: TRANSMITTAL 1994-4 (supplement June 20, 1994)

COMMUNITY AFFAIRS—TITLE 5				
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:23-2.5	Uniform Construction Code: increase in dwelling size	26 N.J.R. 1910(a)	R.1994 d.433	26 N.J.R. 3706(a)
5:23-2.23, 4.20	UCC: testing of backflow preventers	26 N.J.R. 1911(a)	R.1994 d.434	26 N.J.R. 3706(b)
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)		
5:23-3.14, 7	Barrier Free Subcode: correction of public hearing date	26 N.J.R. 3524(a)		
5:23-5.19	UCC: elevator inspector HHS requirements	26 N.J.R. 1912(a)	R.1994 d.435	26 N.J.R. 3706(c)
5:23-8.10	Asbestos Hazard Abatement Subcode: asbestos safety technician	26 N.J.R. 2183(a)	R.1994 d.436	26 N.J.R. 3707(a)
5:23-10	Radon Hazard Subcode: administrative change	_____	_____	26 N.J.R. 3707(b)
5:23-10.1, 10.3, 10.4	Radon Hazard Subcode: schools and residential buildings in tier one areas	26 N.J.R. 2704(a)		
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
5:25A-1.3, 2.1, 2.5, 2.6	FRT plywood roof sheathing failures: alternative claim procedures	26 N.J.R. 2706(a)		
5:34-7.2, 7.5, 7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 2707(a)		
5:37	Municipal, county and authority employees deferred compensation plans	26 N.J.R. 2708(a)		
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)	R.1994 d.398	26 N.J.R. 3163(b)
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:93-3.6, 5.6	New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development	26 N.J.R. 2514(a)		

Most recent update to Title 5: TRANSMITTAL 1994-6 (supplement July 18, 1994)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)

EDUCATION—TITLE 6				
6:7	State-operated school districts	26 N.J.R. 3524(b)		
6:21	Pupil transportation	26 N.J.R. 1997(a)	R.1994 d.404	26 N.J.R. 3164(a)
6:26	Intervention and referral services for general education pupils	26 N.J.R. 2004(a)	R.1994 d.403	26 N.J.R. 3170(a)
6:30-2.1	Adult basic skills programs: professional staff certification	26 N.J.R. 2184(a)	R.1994 d.443	26 N.J.R. 3707(c)
6:70	Library network services	26 N.J.R. 2184(b)	R.1994 d.444	26 N.J.R. 3708(a)

Most recent update to Title 6: TRANSMITTAL 1994-5 (supplement July 18, 1994)

ENVIRONMENTAL PROTECTION—TITLE 7				
7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1G-2.1, 3.1	Community Right to Know: EPA list of regulated substances for accidental release prevention; hazardous substance reporting threshold	26 N.J.R. 2833(a)		
7:1H	County Environmental Health Act rules: pre-proposal	26 N.J.R. 3526(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:4A	Historic Preservation Grant Program	26 N.J.R. 3105(a)		
7:4A-2.3	Historic Preservation Bond Program	26 N.J.R. 3253(b)		
7:4B-3.1	Historic Preservation Bond Program	26 N.J.R. 3253(b)		
7:4C	Historic Preservation Bond Program	26 N.J.R. 3253(b)		
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7-8	Coastal Permit Program: enforcement	26 N.J.R. 1745(a)	R.1994 d.413	26 N.J.R. 3188(a)
7:9A	Individual subsurface sewage disposal systems	26 N.J.R. 2715(a)	R.1994 d.469	26 N.J.R. 3829(a)
7:10	Safe Drinking Water Act rules	26 N.J.R. 2720(a)	R.1994 d.482	26 N.J.R. 3833(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13-7.1	Flood plain redelineation of Pascack and Fieldstone brooks in Montvale	26 N.J.R. 2834(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)	R.1994 d.448	26 N.J.R. 3709(a)
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15	Statewide water quality management planning	26 N.J.R. 3106(a)		
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-5	1994-95 Game Code	26 N.J.R. 1913(b)	R.1994 d.412	26 N.J.R. 3193(a)
7:25-6	1995-96 Fish Code	26 N.J.R. 2835(a)		
7:25-6.9	1995-96 Fish Code: administrative correction	26 N.J.R. 3258(a)		
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)		
7:25-24.7, 24.9	Leasing of Atlantic coast bottom for aquaculture	26 N.J.R. 3109(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	26 N.J.R. 1562(a)	R.1994 d.450	26 N.J.R. 3714(a)
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-8.2, 8.14	Hazardous waste from specific sources: removal of K053 through K059 and K074 from list	26 N.J.R. 1464(a)	R.1994 d.411	26 N.J.R. 3211(a)
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)	R.1994 d.483	26 N.J.R. 3835(a)
7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A	Air pollution control: civil administrative penalties	26 N.J.R. 3566(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.10	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27A-3.10	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)		
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)		
7:61-3.15, 3.16	Board of Commissioners of Pilotage: Drug Free Workplace Program	26 N.J.R. 2238(a)	R.1994 d.449	26 N.J.R. 3715(a)

Most recent update to Title 7: TRANSMITTAL 1994-7 (supplement July 18, 1994)

HEALTH—TITLE 8

8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 2025(a)	R.1994 d.350	26 N.J.R. 3171(a)
8:8-8.3, 8.5, 8.8	Collection of human blood	26 N.J.R. 3141(a)		
8:18	Catastrophic Illness in Children Relief Fund Program	26 N.J.R. 3573(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill-patient summaries (inpatient)	26 N.J.R. 10(a)	R.1994 d.488	26 N.J.R. 3839(a)
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)		
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:57-5	Confinement of persons with tuberculosis	26 N.J.R. 3236(a)		
8:57-5	Confinement of persons with tuberculosis: public hearing	26 N.J.R. 3574(a)		
8:59	Worker and Community Right to Know Act rules	26 N.J.R. 2888(a)		
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8:62	Certification of lead abatement workers, supervisors, inspectors, project designers	26 N.J.R. 3575(a)		
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b), 2095(a))	25 N.J.R. 4844(a)	R.1994 d.457	26 N.J.R. 3717(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a))	26 N.J.R. 13(b)	R.1994 d.456	26 N.J.R. 3716(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a))	26 N.J.R. 1190(b)	R.1994 d.455	26 N.J.R. 3715(b)
8:71	Interchangeable drug products (see 26 N.J.R. 2897(a))	26 N.J.R. 1821(a)	R.1994 d.459	26 N.J.R. 3719(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a))	26 N.J.R. 1822(a)	R.1994 d.458	26 N.J.R. 3717(b)
8:71	Interchangeable drug products	26 N.J.R. 2723(a)	R.1994 d.460	26 N.J.R. 3720(a)
8:71	Interchangeable drug products	26 N.J.R. 3583(a)		
8:91	Health Access New Jersey	26 N.J.R. 2007(a)	R.1994 d.495	26 N.J.R. 3840(a)

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9:4-1.7	Curriculum coordinating committee	26 N.J.R. 1751(a)		
9:9-7.1, 7.2, 7.3	Eligibility criteria for NJCLASS loans	26 N.J.R. 3242(a)		
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9:11-2, 3, 4	Graduate EOF financial eligibility; Martin Luther King Physician-Dentist Scholarship; C. Clyde Ferguson Law Scholarship	26 N.J.R. 1932(a)	R.1994 d.452	26 N.J.R. 3722(a)
9:12-1.1, 1.4, 1.6–1.9, 1.16–1.21, 1.23, 2.5, 2.7, 2.8, 2.10	Educational Opportunity Fund Program	26 N.J.R. 3586(a)		

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10:15	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15A	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15B	Child Care Services Manual	26 N.J.R. 3327(a)		
10:15C	Child Care Services Manual	26 N.J.R. 3327(a)		
10:17	Child placement rights	26 N.J.R. 1563(a)		
10:37-5.28–5.34	Repeal (see 10:37E)	26 N.J.R. 3608(a)		
10:37-6.1–6.4, 6.8, 6.9, 6.25, 6.26, 6.30–6.33, 6.37, 6.38, 6.58, 7.1–7.9	Repeal (see 10:37D)	26 N.J.R. 1277(a)	R.1994 d.464	26 N.J.R. 3726(a)

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10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)	R.1994 d.464	26 N.J.R. 3726(a)
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
10:43	Division of Developmental Disabilities: determination of need for guardian	26 N.J.R. 2838(a)		
10:43	Division of Developmental Disabilities: extension of comment period concerning determination of need for guardian	26 N.J.R. 3341(a)		
10:46A	Family Support Service System	26 N.J.R. 3341(b)		
10:46A	Family Support Service System: administrative correction and extension of comment period	26 N.J.R. 3610(a)		
10:46B	Division of Developmental Disabilities: placement of eligible persons	26 N.J.R. 3611(a)		
10:48-1	Division of Developmental Disabilities: appeal procedure	26 N.J.R. 1280(a)	R.1994 d.475	26 N.J.R. 3861(a)
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
10:48-4	Division of Developmental Disabilities: public hearing and reopening of comment period regarding management of waiting lists for services	26 N.J.R. 2756(a)		
10:49-5.2, 5.3, 5.4	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:49-14.1	Medicaid benefits: recovery from estates of payments correctly made	26 N.J.R. 2757(a)		
10:49-14.4	Medical assistance recoveries involving county welfare agencies	26 N.J.R. 3348(a)		
10:49-17.5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)	R.1994 d.426	26 N.J.R. 3466(b)
10:50-1.2, 1.3, 1.4, 1.6, 1.7, 2.2	Transportation services for Medicaid recipients	26 N.J.R. 1425(a)	R.1994 d.402	26 N.J.R. 3211(b)
10:51-1.12	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:51-1.12, 2.11, 4.13	Medicaid and PAAD programs: unit-dose-packaged drugs	26 N.J.R. 3349(a)		
10:52-1.3, 1.7, 1.8	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:52-8.2	Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component	26 N.J.R. 2239(a)		
10:52-8.2	Manual for Hospital Services: payments for beds for mentally ill and developmentally disabled clients	26 N.J.R. 2241(a)	R.1994 d.432	26 N.J.R. 3473(a)
10:52-8.2	Charity care component of Health Care Subsidy Fund	Emergency (expires 9-30-94)	R.1994 d.440	26 N.J.R. 3485(a)
10:53-1.6, 1.7	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)		
10:54-1.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:58-1.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
10:60-1.3	Home Care Services: accreditation of private duty nursing agencies	26 N.J.R. 2840(a)		
10:60-5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)	R.1994 d.426	26 N.J.R. 3466(b)
10:61-1.3, 3.2	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
10:63	Long-Term Care Services	26 N.J.R. 3614(a)		
10:65-1.1, 1.2, 1.4, 1.5, 1.7, 1.8, 2.1, 2.2, App. H	Pediatric medical day care services	26 N.J.R. 1427(a)	R.1994 d.427	26 N.J.R. 3474(a)
10:66-2.3	Medicaid reimbursement for infertility-related services	26 N.J.R. 3345(a)		
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10:81	Public Assistance Manual	26 N.J.R. 1573(a)	R.1994 d.429	26 N.J.R. 3479(a)
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)	Expired	
10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)	R.1994 d.463	26 N.J.R. 3729(a)
10:81-11.6A, 11.6B, 11.15	Child Support Hotline; locator processing fees	26 N.J.R. 3353(a)		
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)		
10:82	Aid to Families with Dependent Children (AFDC)	26 N.J.R. 1584(a)	R.1994 d.430	26 N.J.R. 3483(a)
10:85	General Assistance Manual	26 N.J.R. 2757(b)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		

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10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)		
10:133A-1.7, 1.9, 1.10, 1.11, 1.12	Division of Youth and Family Services: initial reponse	26 N.J.R. 3355(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		

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10A:6-2.2, 2.7	Inmate legal services: use of typewriters	26 N.J.R. 2188(a)	R.1994 d.410	26 N.J.R. 3178(a)
10A:31-1.3, 8.4, 8.6	Adult county correctional facilities: strip and body cavity searches	26 N.J.R. 2841(a)	R.1994 d.484	26 N.J.R. 3863(a)
10A:71-3.15, 3.16	State Parole Board: parole hearings	26 N.J.R. 2189(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
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11:3-20.6	Private passenger automobile insurers: reporting financial disclosure and excess profits	26 N.J.R. 1938(b)	R.1994 d.425	26 N.J.R. 3441(b)
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11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	26 N.J.R. 2195(a)		
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12:15-1.3–1.7	Unemployment compensation and temporary disability: 1995 maximum weekly benefit rates, contribution levels, and eligibility tests	26 N.J.R. 3592(b)		
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12:18 App.	Department of Labor hearings	26 N.J.R. 2174(a)		
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12:23-5.9	Workforce Development Partnership Program: overpayments of additional unemployment benefits	26 N.J.R. 2198(a)	R.1994 d.409	26 N.J.R. 3180(a)
12:23-7	Workforce Development Partnership Program: occupational safety and health training services	26 N.J.R. 2774(a)	R.1994 d.490	26 N.J.R. 3870(a)
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12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		
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13:35	Board of Medical Examiners rules	26 N.J.R. 2526(a)		
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13:40A-2A.3	Board of Real Estate Appraisers: certification as residential appraiser	26 N.J.R. 902(a)	R.1994 d.420	26 N.J.R. 3460(a)
13:41-4.2	Board of Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)	R.1994 d.394	26 N.J.R. 3181(b)
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44	Board of Veterinary Medical Examiners: practice standards	26 N.J.R. 1951(a)	R.1994 d.442	26 N.J.R. 3737(a)
13:44D	Board of Public Movers and Warehousemen: licensee standards	26 N.J.R. 1758(a)	R.1994 d.395	26 N.J.R. 3182(a)
13:44D-2.2, 2.6	Board of Public Movers and Warehousemen: licensee mailing address and permanent place of business	26 N.J.R. 2745(a)		
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.2	Board of Chiropractic Examiners: patient records and cessation of practice	26 N.J.R. 2866(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:45A-16.1	Home improvement practices: security protection devices	26 N.J.R. 1605(a)	R.1994 d.396	26 N.J.R. 3183(a)
13:45A-27	Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency	26 N.J.R. 3128(a)		
13:45A-28	Motor vehicle leasing	26 N.J.R. 3243(a)		

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13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:48	Charitable fund raising	26 N.J.R. 2746(a)	R.1994 d.494	26 N.J.R. 3882(a)
13:59	State Police: criminal history background checks for non-criminal justice purposes	26 N.J.R. 3595(a)		
13:70-8.18	Thoroughbred racing: items included in jockey's weight	26 N.J.R. 3130(a)		
13:70-8.18	Thoroughbred racing: overweight of jockey after race	26 N.J.R. 3130(b)		
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:72-2.11, 4.10	Racing Commission: casino simulcasting and cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2546(a)		

Most recent update to Title 13: TRANSMITTAL 1994-7 (supplement July 18, 1994)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:0	Intrastate dial-around compensation: preproposal	25 N.J.R. 4586(a)		
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		

Most recent update to Title 14: TRANSMITTAL 1994-3 (supplement May 16, 1994)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)

STATE—TITLE 15

15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		
15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		

Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:1A-1.2	Organization of Department of Transportation	Exempt	R.1994 d.453	26 N.J.R. 3740(a)
16:6	Relocation assistance and right-of-way acquisition	26 N.J.R. 1958(a)	R.1994 d.400	26 N.J.R. 3183(b)
16:21A	Bridge Rehabilitation and Improvement Fund: State aid to counties and municipalities	26 N.J.R. 3246(a)		
16:26	Bureau of Electrical Engineering	26 N.J.R. 1764(a)	R.1994 d.401	26 N.J.R. 3183(c)
16:28-1.5	Speed limit zones along Route 37 in Ocean County	26 N.J.R. 1958(b)	R.1994 d.381	26 N.J.R. 3183(d)
16:28-1.6	School zone along U.S. 40 in Woodstown Borough, Salem County	26 N.J.R. 3131(a)		
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Washington Township	26 N.J.R. 1959(a)	R.1994 d.383	26 N.J.R. 3184(b)
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Dover	26 N.J.R. 1960(a)	R.1994 d.382	26 N.J.R. 3184(a)
16:28-1.10	Speed limits along entire length of U.S. 46, including U.S. 1, 9 and 46	26 N.J.R. 3600(a)		
16:28-1.25	Speed limit zones along Route 23 in Franklin Borough, Sussex County	26 N.J.R. 2749(a)	R.1994 d.465	26 N.J.R. 3887(a)
16:28-1.41	Speed limit zones along U.S. 9 in Ocean County	26 N.J.R. 1960(b)	R.1994 d.385	26 N.J.R. 3184(c)
16:28-1.41	Speed limit zones along U.S. 9 in Galloway Township, Atlantic County	26 N.J.R. 3132(a)		
16:28-1.53	Speed limit zone along Route 165 in Lambertville	26 N.J.R. 3602(a)		
16:28-1.72	Speed limit zones along U.S. 206, including U.S. 206 and 130, in Morris County	26 N.J.R. 1961(a)	R.1994 d.386	26 N.J.R. 3185(a)
16:28-1.79	Speed limit zones along Route 94 in Sussex County	26 N.J.R. 3133(a)		
16:28-1.79	Speed limits along Route 94 in Warren and Sussex counties	26 N.J.R. 3603(a)		
16:28-1.96	Speed limit zones along Route 45 in Gloucester County	26 N.J.R. 1962(a)	R.1994 d.387	26 N.J.R. 3185(b)
16:28-1.106	Speed limit zones along Route 31 in Clinton Township	26 N.J.R. 1963(a)	R.1994 d.388	26 N.J.R. 3186(a)
16:28-1.132	Speed limit zones along Route 47 in Dennis Township, Cape May	26 N.J.R. 2867(a)	R.1994 d.478	26 N.J.R. 3887(b)
16:28A-1.19	Handicapped parking along Route 28 in Elizabeth	26 N.J.R. 3605(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.23	No stopping or standing zones along Route 33 in Manalapan Township	26 N.J.R. 1963(b)	R.1994 d.384	26 N.J.R. 3186(b)
16:28A-1.25	No stopping or standing zones along Route 35 in Berkeley Township	26 N.J.R. 2749(b)	R.1994 d.466	26 N.J.R. 3887(c)
16:28A-1.33	Parking restrictions along Route 47 for entire length	26 N.J.R. 2867(b)	R.1994 d.479	26 N.J.R. 3888(a)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.44	No stopping or standing zones along Route 88 in Lakewood Township, Ocean County	26 N.J.R. 3135(a)		
16:28A-1.57	No stopping or standing along U.S. 206 in Mount Olive	26 N.J.R. 2200(a)	R.1994 d.421	26 N.J.R. 3460(b)
16:28A-1.98	No stopping or standing zones along Route 56 in Deerfield Township, Cumberland County	26 N.J.R. 3136(a)		
16:28A-1.113	No stopping or standing zones along Route 33 (Business) in Manalapan Township	26 N.J.R. 1964(a)	R.1994 d.391	26 N.J.R. 3186(c)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-7.6	Limited access prohibitions along Route 18 Freeway in Monmouth and Middlesex counties	26 N.J.R. 1965(a)	R.1994 d.389	26 N.J.R. 3187(a)
16:30-7.7	Limited access prohibitions along Route 42 Freeway in Gloucester and Camden counties	26 N.J.R. 1964(b)	R.1994 d.390	26 N.J.R. 3187(b)
16:30-3.12	Left turn center lane along Rising Sun Road, Bordentown	26 N.J.R. 3247(a)		
16:31-1.1	Left turn prohibition on U.S. 206 at Valley Road in Hillsborough Township	26 N.J.R. 2547(a)	R.1994 d.439	26 N.J.R. 3740(b)
16:31-1.17	Left turn prohibition along Route 73 in Berlin Township, Camden County	26 N.J.R. 3137(a)		
16:31-1.22	Turn prohibitions along U.S. 130 in Burlington and Mercer counties	26 N.J.R. 2870(a)	R.1994 d.480	26 N.J.R. 3890(a)
16:31-1.29	Left turn prohibitions along U.S. 9 in Lakewood Township, Ocean County	26 N.J.R. 3137(b)		
16:31-1.35	U turn prohibitions along Route 42 in Gloucester County	26 N.J.R. 2750(a)	R.1994 d.467	26 N.J.R. 3890(b)
16:31-1.36	Turn prohibitions along U.S. 40/322 in Egg Harbor Township	26 N.J.R. 2871(a)	R.1994 d.481	26 N.J.R. 3891(a)
16:45	Construction control	26 N.J.R. 2547(b)	R.1994 d.454	26 N.J.R. 3740(c)
16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L	State Highway Access Management Code	26 N.J.R. 2549(a)		
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reduction Program tax credit	26 N.J.R. 756(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53D-1.1	Autobus carrier Zone of Rate Freedom	26 N.J.R. 3247(b)		
16:82	Examination and duplication of NJ TRANSIT records	26 N.J.R. 2871(b)		

Most recent update to Title 16: TRANSMITTAL 1994-7 (supplement July 18, 1994)

TREASURY-GENERAL—TITLE 17

17:1-1.16	State-administered retirement systems: lost pension checks	26 N.J.R. 2200(b)	R.1994 d.416	26 N.J.R. 3460(c)
17:1-4.32	Workers' Compensation: reduction of retirement allowance	26 N.J.R. 2201(a)	R.1994 d.424	26 N.J.R. 3461(a)
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 3606(a)		
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:9-4.2, 8.3, 9.1	State Health Benefits Program: continued coverage under voluntary furlough program	26 N.J.R. 2202(a)		
17:12	Purchase Bureau	26 N.J.R. 3248(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		

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17:16-20.2	State Investment Council: permissible international investments by State-administered pension funds	26 N.J.R. 2751(a)	R.1994 d.445	26 N.J.R. 3742(a)
	Most recent update to Title 17: TRANSMITTAL 1994-5 (supplement July 18, 1994)			
TREASURY-TAXATION—TITLE 18				
18:1	Organization of Division of Taxation	26 N.J.R. 2752(a)		
18:7-15.1–15.5	Corporation Business Tax: urban enterprise zone credits	26 N.J.R. 2203(a)	R.1994 d.419	26 N.J.R. 3462(a)
	Most recent update to Title 18: TRANSMITTAL 1994-4 (supplement June 20, 1994)			
TITLE 19—OTHER AGENCIES				
19:2	South Jersey Transportation Authority: rules of operation; Atlantic City Expressway	26 N.J.R. 1966(a)	R.1994 d.462	26 N.J.R. 3742(b)
19:3, 3A, 4, 5	Hackensack Meadowlands Development District rules	26 N.J.R. 1970(a)		
19:8-1.1, 1.12, 2.1, 2.13, 2.14, 2.15	Garden State Parkway: transporting of hazardous materials	26 N.J.R. 3249(a)		
19:8-1.8	Garden State Parkway: prohibited parking, stopping or standing	26 N.J.R. 3251(a)		
19:8-13	Garden State Parkway: fees for construction and utility installation permits	26 N.J.R. 3252(a)		
19:9-1	Turnpike Authority: traffic control	26 N.J.R. 337(a)	R.1994 d.414	26 N.J.R. 3463(a)
19:10	Public Employment Relations Commission: definitions, service, construction	26 N.J.R. 2205(a)	R.1994 d.437	26 N.J.R. 3745(a)
19:25-1.7, 6.5–6.9	ELEC: permissible uses of candidate funds	26 N.J.R. 2753(a)		
19:25-9, 10	Reporting by continuing political committees, political party committees, and legislative leadership committees	26 N.J.R. 3138(a)		
	Most recent update to Title 19: TRANSMITTAL 1994-7 (supplement July 18, 1994)			
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40	General provisions	26 N.J.R. 2564(a)	R.1994 d.461	26 N.J.R. 3746(a)
19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:40-1.2	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)	R.1994 d.423	26 N.J.R. 3465(a)
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers: administrative correction	———	———	26 N.J.R. 3253(a)
19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41-1.3	Keno	26 N.J.R. 2218(a)		
19:41-1.5A, 1.8, 1.9	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)	R.1994 d.447	26 N.J.R. 3746(b)
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)		
19:41-7.2A	Applicant identification for license or registration	26 N.J.R. 2565(a)	R.1994 d.470	26 N.J.R. 3891(b)
19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)		
19:44-5.2, 8.3, 8.6	Qualification standards for casino employees and gaming school instructors	26 N.J.R. 2207(a)		
19:45-1	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:45-1	Slot tokens, prize tokens, slot machine hoppers: administrative correction	———	———	26 N.J.R. 3253(a)
19:45-1.1	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33, 1.46–1.51	Keno	26 N.J.R. 2218(a)		
19:45-1.1, 1.9B, 1.24, 1.26, 1.27, 1.29	Use of cash complimentary gifts	26 N.J.R. 2212(a)	R.1994 d.471	26 N.J.R. 3891(c)
19:45-1.1, 1.15, 1.20, 1.25, 1.39B, 1.52	Caribbean stud poker: temporary adoption	———	———	26 N.J.R. 3464(a)
19:45-1.17, 1.42	Storage of empty drop boxes and slot cash storage boxes	26 N.J.R. 3606(b)		
19:45-1.24A	Release of wire transfer funds: patron identification procedure	26 N.J.R. 3140(a)		
19:45-1.1, 1.25	Exchange of annuity jackpot checks	26 N.J.R. 2211(a)		
19:45-1.1, 1.37A, 1.39	Electronic transfer credit systems at slot machines; progressive slot machines	26 N.J.R. 2214(a)		
19:45-1.1, 1.41A	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)	R.1994 d.423	26 N.J.R. 3465(a)
19:45-1.17, 1.42	Temporary storage of slot cash storage boxes and slot drop boxes	26 N.J.R. 2213(a)	R.1994 d.422	26 N.J.R. 3464(a)
19:45-1.24A	Wire transfer fees	26 N.J.R. 2215(a)	R.1994 d.472	26 N.J.R. 3892(a)
19:45-1.25	Exchange of counter checks	26 N.J.R. 1994(a)		
19:45-1.25	Repurchase of cash equivalents by patrons	26 N.J.R. 2216(a)	R.1994 d.473	26 N.J.R. 3893(a)
19:45-1.36	Recording of bill changer entries	26 N.J.R. 2217(a)	R.1994 d.474	26 N.J.R. 3894(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:45-1.40B	Temporary investment of annuity jackpot trust funds	26 N.J.R. 1996(a)	R.1994 d.405	26 N.J.R. 3187(c)
19:45-1.46	Inventory of coin coupons	26 N.J.R. 1322(a)		
19:46-1.1, 1.2, 1.4, 1.5	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:46-1.5, 1.6, 1.20, 1.26, 1.33–1.36	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:46-1.5, 1.6, 1.20, 1.26, 1.33–1.36	Slot tokens, prize tokens, slot machine hoppers: administrative correction	_____	_____	26 N.J.R. 3253(a)
19:46-1.5, 1.20, 1.33	Keno	26 N.J.R. 2218(a)		
19:46-1.13F, 1.17, 1.19	Double Down Stud	26 N.J.R. 1323(a)		
19:46-1.13G, 1.17, 1.19	Caribbean stud poker: temporary adoption	_____	_____	26 N.J.R. 3464(a)
19:47-15	Keno	26 N.J.R. 2218(a)		
19:47-16	Caribbean stud poker: temporary adoption	_____	_____	26 N.J.R. 3464(a)
19:47-17	Double Down Stud	26 N.J.R. 1323(a)		
19:51-1.1, 1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:51-1.1, 1.2	Slot tokens, prize tokens, slot machine hoppers: administrative correction	_____	_____	26 N.J.R. 3253(a)
19:51-1.3A, 1.3B	Application for initial casino service industry license and license renewal	26 N.J.R. 2886(a)		
19:51-1.8	Duration of licenses; renewal: administrative correction	_____	_____	26 N.J.R. 3466(a)
19:51-1.8	Renewal of casino service industry enterprise licenses: administrative change	_____	_____	26 N.J.R. 3894(b)
19:53-1.2, 5.5, 5.7	Disbursement credit for goods and services with certified MBEs and WBEs; commercial buyers	26 N.J.R. 785(a)		
19:54-1.6	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 2872(a)		
19:54-1.6	Slot tokens, prize tokens, slot machine hoppers: administrative correction	_____	_____	26 N.J.R. 3253(a)
19:54-1.8, 1.10	Annual gross revenue tax examinations; tax deficiency penalties and sanctions	26 N.J.R. 1994(a)		
19:55-2.11, 4.10	Simulcasting of horse races: cancellation of incorrect pari-mutuel tickets	26 N.J.R. 2566(a)		
19:61-2.2	State agency code of ethics	26 N.J.R. 3141(a)		
19:65-1.2, 2.2, 2.4–2.11, 6.1, 6.2	Hotel development and corridor region projects	25 N.J.R. 4476(a)		
19:65-2.5	Approval criteria for hotel development projects	25 N.J.R. 5455(a)		

Most recent update to Title 19K: TRANSMITTAL 1994-7 (supplement July 18, 1994)