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NEW JERSEY REGISTER

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 20, 1995
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT APRIL 17, 1995

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 35(1995)
Effective Date of Reorganization Plan No. 002-1995

Issued: May 8, 1995
Effective: May 8, 1995
Expiration: Indefinite.

WHEREAS, Reorganization Plan No. 002-1995 (hereinafter "the Plan") was submitted to the Senate and General Assembly on March 13, 1995; and

WHEREAS, paragraph 2 of the Plan provides for the transfer of Division of Motor Vehicles records, property, employees, as well as for the transfer of the unexpended balance of funds appropriated or otherwise available to the Division of Motor Vehicles from the Department of Law and Public Safety to the Department of Transportation pursuant to the "State Agency Transfer Act," P.L. 1971, c.375 (C.52:14D-1 *et seq.*); and

WHEREAS, the Plan shall become effective in 60 days on May 12, 1995, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor the Plan; and

WHEREAS, paragraph 7 of the Plan also provides that it shall become effective on a date later than May 12, 1995, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by an Executive Order; and

WHEREAS, the administrative burden on both the Department of Law and Public Safety and the Department of Transportation in implementing the Plan will be greatly diminished by delaying the effective date of the Plan until the commencement of the new fiscal year; and

WHEREAS, coordinating the effective date of the Plan with the commencement of the new fiscal year and with the effective date of related personnel action in the affected departments will promote the prompt, efficient and effective implementation of the Plan, in the best interests of the State; and

WHEREAS, I conclude that an effective date later than May 12, 1995 is necessary for the orderly and effective implementation of the Plan;

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 the Statutes of this State, do hereby ORDER and DIRECT:

1. Reorganization Plan No. 002-1995, unless disapproved by the Legislature by May 12, 1995, shall be effective on July 22, 1995.
2. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 36(1995)
Workforce Investment Boards

Issued: May 12, 1995
Effective: May 12, 1995
Expiration: Indefinite.

WHEREAS, New Jersey's skilled workforce is our strength as we compete in the world economy; and

WHEREAS, investments in training and education foster high skill/high wage jobs, provide economic leadership for the State, and offer a better standard of living for our citizens; and

WHEREAS, to remain competitive, New Jersey must develop a State-based and locally delivered strategy for an integrated education and job training system based on current and future State and local area labor market demands; and

WHEREAS, the New Jersey Departments of Labor and Education, in conjunction with other State agencies, have been charged with the responsibility to implement a coordinated workforce readiness system consistent with the design constructed by the State Employment and Training Commission ("SETC") in A Unified Plan for New Jersey's Workforce Readiness System (the "Plan"); and

WHEREAS, a coordinated workforce readiness system, in concert with the State's overall economic development strategy, would guide federal, State, and local resources in a manner that promotes a high quality, globally competitive workforce; and

WHEREAS, pursuant to N.J.S.A. 34:15C-15e(7), a coordinated workforce readiness system can be achieved through the expansion of the State's local Private Industry Councils ("PICs") into broad-based Workforce Investment Boards with responsibilities consistent with the Plan;

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. Within sixty days of the issuance of this Order, current county and multi-county PICs, in cooperation with their chief elected local officials, shall develop plans to assume the additional responsibilities as provided under this Order, and to implement those additional responsibilities through a Workforce Investment Board.
2. In areas where more than one PIC serves a county, those PICs shall work cooperatively to develop a single county-based Workforce Investment Board to meet the needs of the entire county workforce population.
3. Workforce Investment Boards shall have all of the rights, duties, and responsibilities now held by any of its constituent PICs as well as all authority granted pursuant to this Order.
4. Workforce Investment Board membership shall be consistent with the provisions of N.J.S.A. 34:15C-15(b). The SETC shall establish additional guidelines concerning the composition of the Workforce Investment Boards to ensure that membership is broad-based and includes local business, education, labor, training, and social services representatives.
5. The Workforce Investment Boards shall maintain statutory responsibilities under the federal Job Training Partnership Act and N.J.S.A. 34:15C-15; however, their emphasis shall be on the coordination of all workforce readiness programs in their local areas.
6. The Workforce Investment Boards shall:

(a) assess the labor market and develop a local strategic plan to optimize federal, State and local workforce readiness resources within their boundaries;

(b) address the concerns of traditionally marginalized populations, such as women and minorities, who constitute the majority of new entrants to the workforce by developing specific plans and activities to serve these populations;

(c) act to influence both program management and resource allocation by analyzing local needs and opportunities and coordinating federal, State, and local resources to achieve defined goals;

(d) design a consolidated workforce investment plan to replace the current separate plans developed for each applicable federal, State and locally funded program; and

(e) establish a marketing and development strategy to ensure the local community is aware of the purpose and functions of the Workforce Investment Board.

7. The SETC immediately shall develop a Statewide workforce investment plan to be incorporated into the Plan, which, together with periodic updates, will be used as a guide for Workforce Investment Boards as they develop and improve local plans.
8. Each workforce investment plan shall include:

(a) the development of an integrated service delivery system to serve the needs of the local population;

(b) the establishment of a School-to-Work system;

(c) an assessment of community needs with a special emphasis on urban areas and special needs school districts served by the Workforce Investment Board;

(d) a coordination of local resources in support of welfare reform efforts to move recipients of public assistance into work activities;

(e) an analysis of the available resources;

(f) a comprehensive plan for the utilization of available resources to meet the community's workforce readiness needs;

(g) an evaluation of any workforce readiness system currently in place;

(h) an oversight and review procedure for implementation of the plan; and

(i) other components as established by the SETC.

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9. The SETC shall review the workforce investment plans to recommend improvements and suggest methods of coordinating with the other local plans. The workforce investment plans, along with the SETC comments, shall be forwarded to the Commissioner of Labor, who will ensure that the plans comply with State and federal law, and are consistent with the Plan.

10. Except where specifically otherwise directed, the Commissioner of Labor shall exercise the authority of the Governor to:

(a) request, accept and direct the allocation of federal and State funds related to workforce readiness programs in the State of New Jersey;

(b) assure that the State is in compliance with the provisions of all federal laws governing the workforce readiness system and provide for corrective actions when necessary;

(c) resolve disputes arising under the workforce readiness programs; and

(d) carry out such other related responsibilities as specified or implied under the workforce readiness laws.

11. The Commissioner of Labor shall coordinate activities with affected departments, which will maintain statutory authority over programs within their jurisdiction.

12. The Department of Labor, in conjunction with the SETC and other affected State departments, shall coordinate the development of an integrated service delivery system for workforce development, which shall be incorporated into the Plan. The delivery system must provide for common intake and assessment for those utilizing workforce readiness programs, uniform administrative procedures and performance standards, and compatible technology.

13. The Departments of Commerce and Economic Development, Community Affairs, Education, Human Services, and Labor shall direct workforce readiness resources in a manner consistent with the development of a unified workforce readiness system. Priority shall be given to those areas in which broadly inclusive Workforce Investment Boards are developing coordinated strategies for the delivery of services to the public consistent with paragraphs 4 and 5 of this Order.

14. Administrative funding for the workforce readiness system shall be obtained from all workforce readiness programs. Funding ratios for the allocation of administrative funding shall be established cooperatively by the departments which fund or administer workforce development programs. The Commissioner of Labor, in consultation with the SETC, shall set criteria and standards for any Workforce Investment Board administrators hired with these administrative resources.

15. The Chairman of the SETC shall continue to determine the budget necessary to carry out the SETC's responsibilities under the federal Job Training Partnership Act and N.J.S.A. 34:15C-1, et seq. Annual expenditures of an amount not to exceed twenty percent (20%) of the State's five percent (5%) resources available to the Governor under the federal Job Training Partnership Act is hereby authorized.

16. The SETC shall develop Statewide guidelines for the implementation of this Order within thirty days of the issuance hereof.

17. The Commissioner of Labor shall exercise all administrative authority necessary to effect the Statewide expansion of PICs into Workforce Investment Boards by no later than July 1, 1996.

18. Executive Order 107 (Florio 1993) is hereby rescinded.

19. This Order shall take effect immediately.

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Motions to Consolidate; Copies
Proposed Amendment: N.J.A.C. 1:1-17.2

Authorized By: Jeff S. Masin, Acting Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f), and (g).
Proposal Number: PRN 1995-317.

Submit comments by July 5, 1995 to:
Jeff S. Masin, Acting Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the Uniform Administrative Procedure Rules, any motion to consolidate which involves cases commenced in separate agencies must include a predominant interest allegation and be supported by briefs and affidavits. These motions must be made as soon as possible and disposed of by interlocutory order prior to commencing the hearing. When consolidation is ordered, the judge must also make a predominant interest determination which is reviewed by both agencies who are "encouraged to consult and coordinate with each other before issuing a final order." N.J.A.C. 1:1-17.7(c).

Predominant interest determinations can be difficult and legally complex matters. The joint jurisdiction over this issue requires State agencies to act with full communication and cooperation.

Currently, agencies do not receive copies of motions for consolidation and predominant interest determinations. Given the complexity and need for cooperation, that has often left these agencies at a disadvantage in promptly resolving the issue.

The proposed amendment provides that agencies which are not a party to the case shall be provided with a copy of any consolidation and predominant interest motion and responsive papers. This will permit the agencies to become informed and involved at the earliest possible date and should facilitate a prompt and cooperative resolution of the matter. Agencies which are parties to the case obviously already are informed of the pendency of such motions.

Social Impact

The proposed amendment should facilitate the ability of two separate agencies with jurisdiction over a case to resolve a predominant interest issue.

Economic Impact

No economic impact is foreseen from this proposed amendment, intended to facilitate resolution of the predominant interest issue.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the contested case hearing procedures are proposed in implementation of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq., and are not subject to any Federal standards or requirements.

Regulatory Flexibility Analysis

The proposed amendment does not impose any reporting or recordkeeping requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment requires that a copy of the motion to consolidate be filed with a transmitting agency. The obligation to do so, and the minimal attendant cost, falls upon the moving party, which may be a small business. Professional services are not required to comply. Given the minimal administrative nature of the requirement, and its purpose to facilitate predominant interest issue resolution, lesser requirements or exceptions are not provided for small businesses.

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

1:1-17.2 Form of motion; submission date

(a) (No change.)

(b) Motions to consolidate cases which commenced in separate agencies and all replies thereto shall include a predominant interest allegation and shall be supported by a brief and affidavits. **Copies of such motions and any responsive papers shall be filed with each agency if that agency is not party to the case.**

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

AGRICULTURE

(b)

DIVISION OF DAIRY AND COMMODITY REGULATION

Dairy Industry
General Provisions
Proposed Readoption: N.J.A.C. 2:48

Authorized By: Dhun B. Patel, Ph.D., M.P.H., Director, Division of Dairy and Commodity Regulation, Department of Agriculture.
Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7 and 20.
Proposal Number: PRN 1995-354.

Submit comments by July 5, 1995 to:
Dhun B. Patel, Ph.D., M.P.H., Director
Division of Dairy and Commodity Regulation
New Jersey Department of Agriculture
CN 330
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 2:48, General Provisions, is scheduled to expire on October 25, 1995 pursuant to Executive Order No. 66(1978). The Division is proposing to readopt these dairy industry rules which have been in effect, in one form or another, since the Milk Control Act was revised and adopted in 1941. The last revisions to the rules were effective in 1990; this proposal will continue the rules adopted in 1990.

A summary of the existing subchapters follows:

Subchapter 1, Marketing Areas, defines two milk marketing areas in New Jersey. The areas defined are the same as those included in State-Federal milk marketing areas designated as No. 2 and No. 4.

Subchapter 2, Prohibition of False, Misleading or Unfair Advertisements of Milk and Milk Products, prevents dealers and store licensees from publishing false and misleading advertisements of milk and prevents the licensee from misleading the consumer concerning the quality of milk and milk products being offered for sale.

Subchapter 3, Reports, defines those reports and records of dealers, processors, subdealers and stores which are considered confidential and not subject to review or reproduction under the provisions of the Freedom of Information Act (P.L. 1963, c.73).

Subchapter 4, Restrictions on the Use of Coupons in Milk Promotion, specifies which coupons may be used in New Jersey. N.J.A.C. 2:48-4.1 prevents the use of coupons in any advertising media which results in the sale of any milk or fluid milk product below cost, as defined in the rules of the Division at N.J.A.C. 2:52-7 and N.J.A.C. 2:53-6. N.J.A.C. 2:48-4.2 and 4.3 provide for the unlimited use of coupons under certain conditions.

Social Impact

The readoption of N.J.A.C. 2:48 assures that the dairy industry and consumers will continue to receive the benefits of effective milk control. Failure to readopt rules defining marketing areas which are co-existent with joint Federal and State orders would lead to confusion on the part of regulated dealers. The remaining portions of the rules protect consumers from false and misleading advertisements for milk and milk products, protect the confidential

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reports and records for licensees of the Division of Dairy and Commodity Regulation and provide more flexible rules for the use of coupons in milk promotion.

Economic Impact

The rules proposed for readoption beneficially affect the New Jersey dairy farmers, milk dealers, retail stores and consumers.

New Jersey consumers purchase about 1.9 billion pounds of fluid milk and milk products (excluding cheese, butter and nonfat dry milk) each year at an annual cost exceeding $550 million. The proposed readoption benefits consumers by creating a market environment wherein the consumer will not be mislead or defrauded by false, misleading or unfair advertisements.

Approximately 260 New Jersey dairy farmers, with an average investment exceeding $400,000 per farm, will receive direct benefits from the proposed readoption. These benefits will occur through the maintenance of the joint protection of Federal and State marketing orders with respect to the guarantees of payment from milk handlers, by defining marketing areas that correspond with the Federal marketing areas. The $50 million generated by New Jersey dairy farmers each year is an important contribution to the State's economy, particularly for rural communities. The rules proposed for readoption are important tools in insuring that dairy farmers receive payment for their product.

Milk processors, dealers and retail stores benefit from the maintenance of a stable competitive marketplace wherein implementation of Division's rules results in the minimization of predatory, disruptive activities through false and misleading advertising.

Milk dealers and store licensees of the Division are assured that their records and reports will remain confidential and not subject to examination by unauthorized persons. Since the liberalization of the coupon portion of the rules, dealers and consumers have benefited from increased product promotions that have increased sales of milk in conjunction with other products.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Director Division of Dairy and Commodity Regulation, New Jersey Department of Agriculture are dictated by the New Jersey Milk Control Act 4:12A-1 et seq., and are not subject to any Federal requirements or standards. The marketing areas specified in the rules are identical to the Federal Milk Marketing Areas.

Regulatory Flexibility Analysis

Readoption of N.J.A.C. 2:48 will not add reporting and recordkeeping requirements greater than those which have been followed by licensees of the Division since 1977. Information requested by the Department as a result of this chapter is normally maintained by dairies and retail stores as part of ordinary business practices, such as purchase and sales records and expense records. Compliance requirements are imposed concerning advertising and use of coupons. The proposed readoption applies to about 350 milk dealers and 9,500 retail stores, most of whom are small businesses.

Initial capital cost and annual cost of compliance are minimal for both large and small businesses. It is estimated that the reports, if done manually, will require approximately one half hour to 45 minutes to prepare. Only 40 of the largest dairies report monthly, leaving 310 small dairies that file an annual report and the 9,500 stores which have no reporting requirements of any kind. Given the preponderance of small businesses and the minimal requirements imposed, no lesser requirements are provided based upon business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:48.

(a)

DIVISION OF DAIRY AND COMMODITY REGULATION

Agricultural Liming Materials

Proposed Readoption: N.J.A.C. 2:70

Authorized By: Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:9-21.1 et seq., specifically 4:9-21.11.

Proposal Number: PRN 1995-355.

Submit comments by July 5, 1995 to:
Dhun Patel, Ph.D., M.P.H., Director
Division of Regulatory Services
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 2:70, Agricultural Liming Materials, is scheduled to expire August 24, 1995, pursuant to Executive Order No. 66(1978). The purpose of this proposal is to readopt the rules concerning agricultural liming materials which have been in effect since prior to 1969. The most recent, minor, changes to the rules were in 1980. The rules define materials, require that manufacturers provide information on their label of the materials and guaranteed analyses of their contents. Manufacturers, are required to register their products prior to offering them for sale and to be responsible for fees and for tonnage inspection reports.

Social Impact

All consumers of agricultural liming materials will continue to have protection when deficient liming materials are detected. Manufacturers will exhibit more care in controlling their formulating processes to avoid a penalty and a possible "stop sale" of deficient product. The Act requires lime manufacturers provide accurate verifiable information of agricultural liming material so that farmers or consumers can rely on it.

Economic Impact

Manufacturers of deficient agricultural liming materials will continue to be assessed financial penalties for the marketing of such products. This chapter provides rules that protect all businesses for a fair competition. Consumers and distributors of agricultural liming materials have been provided relief from economic loss by the requirement that such materials be properly labeled. The failure to include correct ingredients in the materials can effectively burn a crop, and damage the soil itself. These rules have performed, and are expected to perform, a vital role in consumer protection, and this positive economic impact will continue with the readoption of these rules.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the New Jersey Department of Agriculture are dictated by the New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1 and the New Jersey Agricultural Liming Material Act 4:9-21.1 through 4:9-21.11, and are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

This chapter implements N.J.S.A. 4:9-21.1, which although having been altered by revisions, has been in substantially similar form on the books for many years. The original law was in response to the growing use and availability of agricultural liming materials to farmers, who faced products of doubtful value. The law and rules are designed to provide accurate verifiable information so the proper amount and type of agricultural liming materials is used on any particular crop and soil. Some commercial liming material manufacturers and distributors are small businesses, as defined in the Regulatory Flexibility Act. The rules proposed for readoption will have an economic impact on such businesses, though the Department knows of no less restrictive a system than expressed in the standards. No additional recordkeeping or reporting are required under the rules.

The standards are universal and provide a "level playing field" for all manufacturers. This should enable small businesses to compete against the larger businesses' advertising budgets on the basis of the quality of the products.

Further, there is no way to protect the consumer of these products without a method of guaranteeing compliance with label claims. It is important that consumers be able to rely upon labeling which provides comparable information. It is not possible to exempt small businesses from compliance with these rules, due to an overriding concern for the public welfare. These standards, which have been used by the Department for more than 25 years, are the most universally recognized and provide the least costly and best protection available.

Without these rules, New Jersey manufacturers would be left only with a New Jersey market and would be given no chance to compete in other states or countries. Further, every bag of liming materials' load would have to be

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tested by every user to determine if it was desirable for use on each and every area to be covered.

Competition in the liming materials field would soon become based not on results but on brand loyalty, which would further deprive the small manufacturer of the opportunity to compete on merit, requiring them to match the advertising budget of the large manufacturer, which no small manufacturer could do.

The cost of compliance varies with the number of grades of liming materials placed on the market. Then costs are solely in the hands of the manufacturer based upon its program for meeting market demand.

It is the belief of the Department that the rules provide benefits to more small businesses than those impacted by complying with these rules and law. They are the minimum necessary to ensure the honest, understandable trade in the commodity based on the important results deliverable by the product, not upon brand loyalty. It is, as result, more economically advantageous for small business manufacturers to enter and compete in the market in both New Jersey and the world.

Lastly, liming materials are one of the key ingredients of modern agriculture and an important factor in landscaping and gardening.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:70.

(a)

DIVISION OF DAIRY AND COMMODITY REGULATION

Grades and Standards
Fruit and Vegetable Fees and Charges
Proposed Amendments: N.J.A.C. 2:71-2.28, 2.29, 2.30 and 2.32

Authorized By: Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:10-6 and 4:10-13.

Proposal Number: PRN-356.

Submit comments by July 5, 1995 to:

Dhun B. Patel, Ph.D., M.P.H., Director
Division of Dairy and Commodity Regulation
N.J. Department of Agriculture
CN 330
Trenton, NJ 08625
Telephone: 609-292-5575

The agency proposal follows:

Summary

The proposed amendments increase many of the fees charged for the inspection and grading of farm products in accordance with standards established and promulgated by the Department of Agriculture. The fees are increased as follows: the five-day week inspection for not more than one commodity from $400.00 to $500.00; the per hour overtime from $15.00 to $18.75, for the same; the five-day week inspections for more than one commodity from $800.00 to $1,000; the per hour overtime from $30.00 to $36.00 for the same. Hourly inspection rate charge from 8:00 A.M. through 5:00 P.M. from $18.50 to $22.00. Hourly inspection rate change from 6:00 P.M. through 7:00 A.M. from $27.75 to $33.00. Trailer, carload, warehouse and storage minimum inspection fee is increased from $20.00 to $25.00. Container inspection other than potatoes is increased from $0.12 to $0.15 per container. Delayed inspections are increased from $15.00 to $18.00.

Excess charges per package or hundred weight will be $0.08. The excess fruit and vegetable per package charge for five-day week, is changed from 3,334 to 3,333 packages, and the charges for potatoes changed from 2,175 to 3,333 hundred weight.

A charge of $12.00 per man-hour will be charged, in addition to the regular fee on Saturdays, Sundays and legal State Holidays.

Inspection and grading services are provided to applicants pursuant to their request. Recipients of the services voluntarily agree to pay the fees for such charges prior to requesting the Department of Agriculture's inspection and classification.

Social Impact

The only people affected by these amendments will be the users of the voluntary inspection and grading services. These services help to maintain and promote agricultural commodities of the highest quality for the consumer. As a result of the grading services, perishable fresh fruits and vegetables, of uniform grade and standards, are readily available for the consumer.

Economic Impact

Increases in salaries and overhead costs in the last several years necessitate the increased fees. The Department of Agriculture must maintain the inspection program on a "break-even basis" if it is to continue to offer this program to the users.

There will be a slight adverse economic impact on the users of these voluntary inspection and grading services. The increases are minimal in relation to the economic value of the product at present. These charges have not been increased in at least two years.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the New Jersey Department of Agriculture are dictated by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 4:10-1 et seq. and are not subject to any Federal requirements of standards.

Regulatory Flexibility Analysis

Most of the regulated public can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments apply mostly to produce dealers, brokers, agents and commissioned merchants. The proposed amendments apply occasionally to individual farmers and farmer owned cooperatives. In 1994, 65 of these small businesses used the voluntary inspection and grading services described in the rule. There are no reporting, recordkeeping or other compliance requirements imposed, by the Department of Agriculture, on these small businesses apart from the fees listed. These small businesses will require no professional services, capital costs or compliance costs beyond the fees for the inspection service.

The inspection and grading services to which these charges apply are voluntary and are used by the previously described businesses as they avail themselves of the service. For example, if a shipper in New Jersey wishes to ship certain commodities to other countries, the United States Military or any other buyer requiring that the particular shipment be certified as to grade and condition; that shipper will request grading certification service from the Department of Agriculture. Following completion of the certification, the applicant for service will be billed according to these rules.

This service is designed to minimize adverse economic impact on small businesses by supplying a service that allows them to compete in marketing channels that otherwise would be closed to them.

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

2:71-2.28 Charges for inspection or grading and certification services; written agreements for single commodity inspection

(a) Charges for inspection or grading and certification services of five or more consecutive days duration, performed pursuant to a written agreement between the New Jersey Department of Agriculture and the requester of the services, shall be made according to the following schedule:

1. Basic schedule for all products:

i. A charge of [$400.00] **$500.00** per five day week (Monday through Friday) or 40 hours or less for each inspector;

ii. A charge of [$15.00] **$18.75** per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;

iii. There will be at least a four hour minimum charge of [$60.00] **$75.00** assessed for each inspector assigned work on Saturday day and/or Sunday; and a charge of [$15.00] **$18.75** per hour, or portion thereof, for the actual hours worked by each inspector on Saturday and/or Sunday in excess of four hours[.]**;**

iv. There will be at least a four hour minimum charge of [$60.00] **$75.00** assessed for each inspector assigned work on legal State holidays occurring Monday through Friday; and a charge of [$15.00] **$18.75** per hour, or portion thereof, for the actual hours worked by each inspector on legal State holidays occurring Monday through Friday in excess of four hours; and

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v. Official mileage will be charged at the prevailing State rate per mile starting and ending where the inspector officially reports for duty.

2. Charges for inspection or grading and certification of fruit and vegetables other than potatoes for fresh market:

i. A charge of [$0.06] **$0.08** will be made for all packages inspected or graded and certified in excess of [3,334] **3,333** packages during the seven day week (Saturday through Friday).

3. Charges for inspection or grading and certification of potatoes for the fresh market:

i. A charge of [$0.03] **$0.08** per hundredweight for all hundredweight inspected or graded and certified in excess of [2,175] **3,333** hundredweight during the seven day week (Saturday through Friday).

2:71-2.29 Written agreements for multiple commodity inspection

(a) Charges for written agreements shall be made according to the following schedule.

i. A charge of [$800.00] **$1,000** per five day week (Monday through Friday) or 40 hours or less for each inspector for the inspection and/or grading of more than one commodity;

ii. A charge of [$30.00] **$36.00** per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;

iii. There will be at least a four hour minimum charge of [$120.00] **$144.00** assessed for each inspector assigned work on Saturday and/or Sunday;

iv. A charge of [$30.00] **$36.00** per hours, or portion thereof, for the hours worked by each inspector on legal State holidays occurring Monday through Friday;

v. There will be at least a four hour minimum charge of [$120.00] **$144.00** assessed for each inspector assigned work on legal State holidays occurring Monday through Friday; and

vi. A charge of [$0.06] **$0.08** will be made for all packages (other than potatoes) inspected or graded and certified in excess of 6,667 packages during the seven day week (Saturday through Friday).

2:71-2.30 Charges; oral agreements; trailer, car, warehouse and storage lots

(a) Charges for inspection or grading and certification services performed to an oral agreement between the New Jersey Department of Agriculture and the requester, for all trailer, car, warehouse and storage lots, shall be made according to the schedule detailed below. A minimum of [$20.00] **$25.00** for inspection or grading and certification services shall be charged. However, if the conditions listed in N.J.A.C. 2:71-2.30 are met, the charges shall be calculated according to the hourly rate schedule set out in N.J.A.C. 2:71-2.31.

1. Basic charge schedule for products other than potatoes:

i. A charge of [$0.12] **$0.15** per container for all containers;

2. Basic charge schedule for potatoes;

i. A charge of [$0.14] **$0.18** per hundredweight;

ii. All other size containers and bulk loads shall be converted to hundredweight equivalents. Charges for these equivalents shall be at the rate of [$0.14] **$0.18** per hundredweight.

3. Phytosanitary certificates:

i. (No change .)

ii. The [Chief, Bureau of Commodity Inspection and Grading] Deputy Director, Division of [Regulatory Services] Dairy and Commodity Regulation, may be contacted for information on countries, requiring additional declaration statements.

4. Delayed inspections; Delayed inspections are those inspections requiring more than two hours to complete (exclusive to travel time) due to delays of any kind not attributable to the inspector. Additional charges for delayed inspections shall be assessed according to the following schedule:

i. [$15.00] **$18.00** per hour charged in half hour increments.

ii. The minimum charge shall be [$7.50] **$9.00**.

5. Saturday, Sunday and legal State holiday inspections: For inspections performed on Saturdays, Sundays or legal State holidays a per man-hour rate will be charged in addition to the regular fee and shall be assessed according to the following schedule:

i. [$10.00] **$12.00** per hour charged in half hour increments.

ii. The minimum charge shall be [$5.00] **$6.00**.

2:71-2.32 Hourly rate charges

(a) The hourly rate charges shall be made according to the following schedule:

1. A charge of [$18.50] **$22.00** per hour, or portion thereof, for regular work hours, 8:00 A.M. to 5:00 P.M. on regular workdays, Monday through Friday;

2. A charge of [$27.75] **$33.00** per hour, or portion thereof, for work started or completed between 6:00 P.M. and 7:00 A.M. on regular workdays, Monday through Friday;

3. A charge of [$27.75] **$33.00** per hour, or portion thereof, for work performed on Saturdays, Sundays, or legal State holidays at the request of the requester.

BANKING

(a)

OFFICE OF THE COMMISSIONER

Pawnbroking Law Regulations

Proposed Repeal and New Rules: N.J.A.C. 3:16

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1 and 45:22-11.

Proposal Number: PRN 1995-334.

Submit comments by July 5, 1995 to:
Elaine W. Ballai, Regulatory Officer
Office of the Commissioner
Department of Banking
20 West State Street
Trenton, N.J. 08625

The agency proposal follows:

Summary

This proposal would repeal N.J.A.C. 3:16 which is scheduled to expire on June 18, 1995, and adopt new rules N.J.A.C. 3:16. N.J.S.A. 45:22-1 et seq., the New Jersey law governing pawnbrokers, has not changed substantially since its enactment in 1931. However, several issues have been raised both by pawnbrokers and members of the general public which indicate a need to substantially revise N.J.A.C. 3:16.

Proposed subchapter 1 includes general provisions applicable to all applicants and licensees. N.J.A.C. 3:16-1.1 and 1.2 describe the purpose and scope of the proposed new rules. A definition is provided in N.J.A.C. 3:16-1.3 of "commercially reasonably manner" consistent with the law of secured transactions, which governs the sale of collateral after default. N.J.S.A. 12A:9-504(3). Definitions of "unredeemed pledge" and "substantial stockholder" are also supplied. The remaining sections of proposed N.J.A.C. 3:16-1 set forth requirements for licensing, application procedures, content of applications and financial arrangements such as surety bond and insurance which are required by law. Proposed subchapter 2 regulates the pawnbrokers' conduct of business, including recordkeeping, reporting, display of goods, advertising and public auction. Proposed subchapter 3 requires that a licensee provide the Commissioner with certain information concerning any claims or lawsuits which the licensee may receive. Proposed subchapter 4 sets forth conditions and procedures by which the Commissioner may suspend or revoke a pawnbroker's license.

The major differences between proposed N.J.A.C. 3:16 and the rules to be repealed consist of the addition of details, in order to provide licensees with more explicit instruction concerning the conduct of their business and recordkeeping. For example, instead of merely requiring that sales of unredeemed pledges be conducted in a commercially reasonable manner, the term "commercially reasonably" is defined and specific requirements are imposed for advertising sales, inspection of articles by the public, and recordkeeping related to articles sold or purchased. In addition, the licensing application procedures are set forth and causes for suspension or revocation of a license are provided.

Social Impact

Adoption of proposed new rules N.J.A.C. 3:16 will have a favorable social impact on members of the general public who utilize the services and who

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purchase the merchandise offered for sale by pawnbrokers. These rules protect the public by imposing licensing and operating requirements and procedures on licensees and by providing for oversight by the Department and by the police as permitted by N.J.S.A. 45:22-1 et seq. The proposed rules are designed to expand recordkeeping and regulate conduct of pawnbrokers to promote the operation of their businesses in a commercially reasonable manner.

Economic Impact

It is not anticipated that adoption of N.J.A.C. 3:16 will have any adverse economic consequences for those licensees who are conducting their pawnbrokering establishments in a commercially reasonable manner; licensing and bonding fees have not been increased. The proposed additional recordkeeping and reporting requirements may create some additional bookkeeping expense and expenditure of time for licensees who do not correctly keep complete records of their transactions. However, the proposed new rules may have a positive effect on members of the general public who will be more easily able to view all items, whether in the licensee's place of business or at the site of a public auction of unredeemed pledges.

Executive Order No. 27 Statement

Regulation and licensing of pawnbrokers in New Jersey is governed only by New Jersey statutes and rules; there is no body of Federal law which impacts or controls this area. Since N.J.S.A. 45:22-11 authorizes the Commissioner to promulgate rules consistent with the statute, and because no Federal law or rules exist, a Federal exceedance analysis is not applicable to this proposal.

Regulatory Flexibility Analysis

Adoption of N.J.A.C. 3:16 should have minimal effect on licensees, most of whom are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14-B-16, since these businesses have been in operation for several years under essentially similar rules. Proposed N.J.A.C. 3:16-2.1(a) requires that a licensee maintain a cash book and general ledger, as was required under the rules being repealed, at N.J.A.C. 3:16-3.1. Proposed N.J.A.C. 3:16-2.1(b) requires the submission of an annual report to contain ten categories of information, including number of loans made during the year, amount of each loan and rate of interest, number of pledges redeemed, number of pledges unredeemed, dates of sale(s) of unredeemed pledges, number of pledges sold at each sale, number of purchases made during the preceding year, a description of each item pledged or purchased with estimated market value, balance sheets and income statements for the current year and a notarized certification by the licensee that he is in compliance with N.J.S.A. 45:22-34. The proposed additional recordkeeping and reporting requirements may create some additional bookkeeping expense and expenditure of time for licensees who do not currently keep complete records of their transactions. This is, however, not expected to result in substantial expense. The proposed new rules provide no exemption or different compliance requirements based on size of a pawnbroker's business, since all licensees engage in similar transactions as pawnbrokers and the proposed rules are designed both to enhance the level of services and to protect the interests of consumers. Those licensees who do a large volume of business will compile longer lists for reporting purposes but the content of the reports is the same for all, and the additional bookkeeping and reporting requirements are not expected to necessitate professional services or require initial capital costs.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 3:16.

Full text of the proposed new rules follows:

CHAPTER 16
PAWNBROKING LAW REGULATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

3:16-1.1 Purpose

The purpose of these rules is to establish minimum requirements for application of licensure, recordkeeping, reporting and general conduct of business pursuant to N.J.S.A. 45-22 et seq.

3:16-1.2 Scope

These rules are applicable to all licensed pawnbrokers and all applicants for licensure.

3:16-1.3 Definitions

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

"Commercially reasonable manner" means that display and sale of goods shall be made in keeping with prevailing trade practices among reputable and responsible business and commercial enterprises engaged in the same or similar business.

"Substantial stockholder" means any person who beneficially owns or controls more than 10 percent of the outstanding voting shares of an applicant or a licensee.

"Unredeemed pledge" refers to an item of personal property on which the licensee has loaned a sum of money to a pledgor for a specified time period, and which, after proper notice, the pledgor has failed to redeem.

3:16-1.4 Application for license

(a) No person shall engage in the business of a pawnbroker in this State without first obtaining a license. A person is engaged in the business of a pawnbroker if such person:

1. Advertises, causes to be advertised, solicits, negotiates, offers to make or makes a loan on deposit or pledge of personal property;

2. Does business as a furniture storage warehouseman and lends money on goods, wares or merchandise pledged or deposited as collateral security; or

3. Purchases property on condition of selling it back at a stipulated price.

(b) No applicant for a license shall commence operations until a license has been issued.

(c) Application shall be made on a form supplied by the Commissioner. The applicant shall supply the following:

1. The full name and residence of each owner, substantial stockholder, officer, partner, and manager of the business to be licensed;

2. The location of the place or places of business;

3. The application fee;

4. A statement of net worth;

5. A copy of the surety bond as set forth in N.J.A.C. 3:16-1.5;

6. A copy of the insurance policy as set forth in N.J.A.C. 3:16-1.6;

7. Corporate applicants shall submit a copy of the Certificate of Incorporation showing the filing or recording stamp of the New Jersey Secretary of State, and shall identify the registered agent for service of process; and

8. Any other information or supporting documentation which the Commissioner may require.

(d) The licensee shall post and at all times display in a conspicuous place on the premises the license and also the schedule of fees to be charged. The fee schedule shall be printed in bold type, in both the English and Spanish languages except where the Department deems it necessary that a different or additional language be used.

3:16-1.5 Surety bond

(a) An applicant shall file with the Commissioner a bond in the amount of $1,000 for each place of business. The surety bond shall be obtained from an insurance company authorized to do business in New Jersey.

(b) The bond shall run to the State, pro rata, for the benefit of the Department and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation of the pawnbroker in the course of activity as a licensee. The bond shall not be payable for claims made by business creditors.

3:16-1.6 Insurance

A licensee shall maintain sufficient fire and liability insurance to cover any pledgor in the event of loss by fire, theft, burglary or otherwise, or his liability to the pledgor. Pledged items shall be insured according to their estimated market value.

3:16-1.7 Change of location

A licensee shall notify the Commissioner in writing of a change in the location of any licensed place of business at least ten days prior to the move.

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SUBCHAPTER 2. CONDUCT OF BUSINESS; RECORDKEEPING

3:16-2.1 Recordkeeping; reporting

(a) In addition to records specified to be kept by N.J.S.A. 45:22-1 et seq., a licensee shall maintain a cash book and general ledger. The cash book shall be a record of each amount paid out and the purpose for which it was paid, and each amount received and on what account received. The cash book shall be balanced daily.

(b) A licensee shall file an annual report with the Commissioner on or before March 1 on a form supplied by the Commissioner. The annual report shall supply the following:

1. The number of loans made during the preceding year;
2. The amount of each loan and rate of interest;
3. The number of pledges redeemed;
4. The number of pledges unredeemed;
5. The date(s) of sales of unredeemed pledges;
6. The number of pledges sold at each sale;
7. The number of purchases made during the preceding year;
8. A description of each item pledged or purchased, with estimated market value noted;
9. Balance sheets and income statements for the current year; and
10. A notarized certification by the licensee that he is in compliance with N.J.S.A. 45:22-34.

(b) A licensee shall maintain its records on the licensed premises available for inspection by the Department or the police. Records shall be retained on file for five years.

3:16-2.2 Display of merchandise; inspection; prohibition

(a) A licensee shall make available for inspection by the Department and the police all pledged and purchased items, including those items which the licensee has acquired as the result of a sale of unredeemed pledges.

(b) A licensee shall conduct his business in a commercially reasonable manner.

(c) A licensee shall not accept a motor vehicle for pawn.

3:16-2.3 Advertising

(a) No licensee shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, computer modem, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of pawnbrokering or with respect to any person in the conduct of such business, which is inaccurate, untrue, deceptive or misleading.

(b) A pawnbroker is prohibited from using on his stationery, records, forms, literature or any advertising matter the words "bank" or "banking," or any other words which might give rise to the inference that such pawnbroker is in any sense a bank or is doing a banking business.

(c) An advertisement for public auction of unredeemed pledges shall be placed in three consecutive issues of a major daily or weekly newspaper of general circulation in the vicinity where the pawnbroker's business is located. Each advertisement shall include notice of the time and a public place where members of the public may view the merchandise for three consecutive days prior to sale. Copies of all advertisements shall be retained for examination by the Department.

(d) A list of items to be sold shall be posted on the licensee's principal business premises and shall be made available to members of the public upon request.

3:16-2.4 Auction; notice

(a) A licensee shall obtain the name and address of each person who makes a purchase as a result of a public auction. The purchasers' names and addresses shall be retained for examination by the Department and the police.

(b) A licensee shall prepare and maintain a list, containing a description of each item which the licensee acquires as a result of an auction of unredeemed pledges.

(c) A licensee shall allow public inspection of all unredeemed pledges for three days prior to the date of auction and for at least five days after the last date of publication of the notice of auction of the pledges.

(d) Notice of public auction shall be mailed to each pledgor of record by certified mail, return receipt requested.

3:16-2.5 Service charges

(a) On loans secured by the pledge of articles, a licensee may levy a service charge equal to eight percent of the amount of the loan, but such service charge shall not exceed $3.00.

(b) Such service charge shall only be levied once in any 12-month period.

(c) When any of the foregoing service charges are levied, it shall be done with full knowledge and consent of the pledgor.

3:16-2.6 Lost pledge tickets; prohibition

A licensee shall not charge a fee for services in connection with a lost or destroyed pledge ticket.

SUBCHAPTER 3. LAWSUITS; CLAIMS; REPORTING

3:16-3.1 Reports of legal actions

(a) A licensee shall provide the Commissioner with a copy of every lawsuit, claim or suit upon a bond, not later than 10 days from the date on which the lawsuit, claim or suit upon a bond is received.

(b) A licensee shall report to the Commissioner in writing within three days the disposition of a lawsuit, claim or suit upon a bond, whether by settlement, judgment or court order, involving the licensee's pawnbroker business. A copy of the settlement agreement, judgment or court order shall be provided to the Commissioner.

SUBCHAPTER 4. REVOCATION OR SUSPENSION OF LICENSE

3:16-4.1 Revocation; causes

(a) The Commissioner may revoke or suspend a license if, after notice and hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, the Commissioner determines that the licensee:

1. Has violated any provision of N.J.S.A. 45:22-1 et seq. or any order, rule, or regulation made or issued pursuant to thereto, or has violated any other law in connection with the operation of the pawnbrokers business;
2. Has failed to pay any fee imposed by the Commissioner;
3. Has withheld information from the police or from the department, or has made a material misstatement in the application for the license, or in any other submission to the Department;
4. Has been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or has had a final judgment entered against him in a civil action upon grounds of fraud, misrepresentation or deceit;
5. Is associating with, or has associated with, any person who has been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing or who has had a final judgment entered against him in a civil action upon grounds of fraud, misrepresentation or deceit;
6. Has become insolvent or has acted in a way that indicates the licensee's business would not be operated in a financially responsible manner;
7. Has demonstrated unworthiness, incompetence, bad faith or dishonesty in transacting business or otherwise; or
8. Has engaged in any other conduct which would be deemed by the Commissioner to be grounds to deny, revoke or suspend a license.

ENVIRONMENTAL PROTECTION

(a)

POLICY AND PLANNING/OFFICE OF AIR QUALITY MANAGEMENT

Control and Prohibition of Mercury Emissions

Proposed Amendments: N.J.A.C. 7:27-27.4 and 27.9 and 7:27A-3.10

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Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.A.C. 26:2C-8.
DEP Docket Number: 24-95-05/540.
Proposal Number: PRN 1995-357.

A **public hearing** concerning this proposal will be held on:
Tuesday, July 11, 1995 at 10:00 A.M.
First Floor Hearing Room
Department of Environmental Protection
401 East State Street
Trenton, New Jersey

Submit written comments by July 18, 1995 to:
Janis E. Hoagland, Esq.
Attn. DEP Docket Number 24-95-05/540
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

These amendments will become operative 60 days after adoption. Pursuant to N.J.A.C. 1:1, adoption occurs upon signature by the Commissioner.

Summary

The New Jersey Department of Environmental Protection (the Department) adopted N.J.A.C. 7:27-27, Control and Prohibition of Mercury Emissions, in September 1994 (see 26 N.J.R. 4355(a), November 7, 1994) based on recommendations of the Task Force on Mercury Emissions Standard Setting (Task Force). The Task Force was formed by the Department in 1992 to assist in the development of statewide mercury emissions standards and included representatives from the Department, environmental organizations, the regulated industry, county government, and other interested parties. The Task Force produced a final report entitled "Task Force on Mercury Emissions Standard Setting, Final Report on Municipal Solid Waste Incineration (July 1993)."

The Task Force determined that a mercury emissions standard was technologically and practically achievable for municipal solid waste (MSW) incinerators operating in New Jersey. The Task Force recommended that the Department set a stringent mercury emission standard of 28 micrograms per dry standard cubic meter (ug/dscm), corrected to seven percent oxygen, for all MSW incinerators in New Jersey, to be achieved by the year 2000, with an interim standard of 65 ug/dscm, corrected to seven percent oxygen, to be met by the year 1996. The Task Force recognized that the installation of air pollution control technology alone would not enable MSW incinerator facilities to achieve the emissions standards and recommended that the Department require programs for source reduction and separation of mercury containing waste materials. Also, since MSW incinerators may not have complete control over the waste stream entering their facility, the Task Force recommended that MSW incinerator owners and operators be given the option of complying with an 80 percent control efficiency standard.

The existing rules regulate mercury emissions from MSW incinerators. Sections of N.J.A.C. 7:27-27 are reserved for future regulation of mercury emissions from hospital waste incinerators, sewage sludge incinerators, hazardous waste incinerators and coal burning boilers. The proposed amendments will affect MSW incinerator owners and operators. The Department is proposing to change the method of determining compliance with the 80 percent control efficiency standard from quarterly averaging of compliance testing results to annual averaging. These amendments will provide for a more consistent and equitable method of assessing, reporting, and enforcing compliance with mercury emissions emitted by MSW incinerators. Additional changes to the rules are being proposed to reflect new rules adopted at N.J.A.C. 7:27-22, Operating Permits, and amendments adopted by N.J.A.C. 7:27-8, Permits and Certificates regarding preconstruction approval and operating permits (see 27 N.J.R. 3943(b)). A change is also proposed to reflect amendments to N.J.A.C. 7:27-8 which recodified the requirements for certification of test reports from N.J.A.C. 7:27-8.24 to 7:27-1.39. The Department is also proposing minor amendments to N.J.A.C. 7:27A-3.10 in the penalty provisions applicable to violations of the mercury emissions rules.

N.J.A.C. 7:27-27.4 Municipal solid waste (MSW) incinerators

N.J.A.C. 7:27-27.4 requires all MSW incinerators operating in New Jersey that are capable of incinerating 9.6 tons per day (tpd) or more of MSW to install and operate mercury emission control apparatus. In addition, all MSW incinerators, regardless of size, must comply with either a numerical emissions standard or a control efficiency standard. The numerical standard consists of a two phase mercury emissions limit. The first phase limits mercury emission to 65 ug/dscm (corrected to seven percent oxygen) effective January 1, 1996 through December 31, 1999. The second phase limits mercury emissions to 28 ug/dscm (corrected to seven percent oxygen) on and after January 1, 2000. Since the owner or operator of a MSW incinerator may not have complete control over the type of material entering the waste stream, the rules provide the alternative of complying with an 80 percent control efficiency standard.

N.J.A.C. 7:27-27.4(d) currently requires compliance with the numerical standard to be determined annually based on the average of all compliance testing performed in a calendar year. However, compliance with the 80 percent control efficiency standard is determined quarterly based on compliance testing conducted in a calendar quarter. Since the potential mercury emissions from MSW incineration are quite variable, the Task Force report recommended that any emissions standard should be based on the average of all compliance tests conducted at the facility over a period of one year. The Department proposes to amend N.J.A.C. 7:27-27.4(d) so that compliance with both the numerical and control efficiency standards is determined based on an annual average. This will allow test results from an entire year to be considered when determining compliance, resulting in a more consistent assessment of control efficiency.

The existing rules at N.J.A.C. 7:27-27.4(h) require any person who plans to alter any equipment or control apparatus in order to comply with the requirements of this subchapter to first obtain a preconstruction permit in accordance with N.J.A.C. 7:27-8.3. Recently adopted rules at N.J.A.C. 7:27-22 and amendments to N.J.A.C. 7:27-8 (see 26 N.J.R. 3943(b)) affected the procedure governing preconstruction review; however, this did not affect the requirement to obtain preconstruction authorization. Therefore, the proposed change at N.J.A.C. 7:27-27.4(h) alerts the regulated community that preconstruction approval is still required under either subchapter 8 or subchapter 22.

N.J.A.C. 7:27-27.9 Reporting and recordkeeping

N.J.A.C. 7:27-27.9(c) currently requires the owner or operator of a MSW incinerator operating in New Jersey to report either the mercury emissions or control efficiency to the Assistant Director of Air and Environmental Quality Enforcement. If the owner or operator elects to report the mercury concentration, then the report must contain the annual average mercury concentration emitted for the previous calendar year. The mercury emissions report must be submitted to the Assistant Director by February 28 (or the next business day if February 28 falls on a weekend or holiday) of the following year. If the owner or operator elects to report the control efficiency then a report containing the quarterly average control efficiency must be submitted to the Assistant Director within 60 days after completion of each calendar quarter.

The Department proposes to amend N.J.A.C. 7:27-27.9(c) to provide that a report of the results of both the mercury emissions and control efficiency shall be based on an annual average of all test results conducted for the previous calendar year and that the compliance report shall be submitted to the Assistant Director by February 28, or the next business day if February 28 falls on a weekend or holiday, of each year. These changes are consistent with recommendations put forth by the Task Force.

The Department is not changing the existing requirement at N.J.A.C. 7:27-27.9(a) for reporting quarterly compliance test results to the Bureau of Technical Services. The results of quarterly compliance testing are to be reported to the Bureau of Technical Services within 60 calendar days after completion of the compliance testing required for that quarter so that the Department may review the results in a timely manner and obtain indications of potential noncompliance.

N.J.A.C. 7:27-27.9(f) currently requires that any compliance test report submitted to the Department be certified in accordance with N.J.A.C. 7:27-8.24. As a result of recent amendments to N.J.A.C. 7:27-8 (see 27 N.J.R. 3943(b)) the provisions for report certification have been recodified at N.J.A.C. 7:27-1.39. The Department proposes to amend N.J.A.C. 7:27-27.9(f) to reflect this change.

N.J.A.C. 7:27A-3.10 Civil administrative penalties

At N.J.A.C. 7:27A-3.10(l)27 in the table of civil administrative penalties for violations of air pollution control rules, the Department is substituting "deviation from" for "over" to clarify the description of the degree of noncompliance with either the mercury emissions standard or control efficiency standard of N.J.A.C. 7:27-27.4(b) used in determining a penalty.

N.J.A.C. 7:27-27.4(h) currently indicates that any facility required to alter

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any equipment or control apparatus in order to comply with the requirements of this subchapter must apply to the Department for a preconstruction permit by December 27, 1994. This provision was intended to require existing facilities to obtain the appropriate preconstruction approval in a timely fashion so that the equipment or control apparatus required, pursuant to N.J.A.C. 7:27-27.4(a), would be installed and operating by December 31, 1995. The Department proposes to delete the requirement to obtain a preconstruction permit by December 27, 1994 as specified at N.J.A.C. 7:27-27.4(h) and the corresponding penalty at N.J.A.C. 7:27A-3.10(l)27 since preconstruction approval has been granted to all existing facilities affected by N.J.A.C. 7:27-27.4(h) and these provisions are therefore obsolete. Owners and operators of MSW incinerators are still required to obtain preconstruction approval pursuant to N.J.A.C. 7:27-8 or N.J.A.C. 7:27-22.

Social Impact

The proposed amendments will have a positive social impact on owners and operators of MSW incinerators operating in New Jersey and also on the quality of life in New Jersey. The amendments do not change the requirement that owners or operators of MSW incinerators install appropriate control technology. However, the amendments do make consistent the methods of determining compliance with the mercury emissions standard and the control efficiency standard. This will have a positive social impact on the business community by providing consistency in enforcement. The health of people who live and work in New Jersey will continue to be protected. The amendments will also relieve MSW incinerator owners and operators of the burden of submitting quarterly compliance reports to the Department without depriving the Department of the information necessary to ensure accurate and equitable enforcement of the standards in order to protect the health and welfare of citizens in this State.

The proposed amendments to the rules governing civil administrative penalties will have a positive social impact by continuing to encourage compliance and discourage noncompliance with the State's air pollution control laws and regulations.

Economic Impact

These amendments will primarily impact the six existing New Jersey Resource Recovery Facilities (one located at Fort Dix military base and one each located in Camden, Essex, Gloucester, Union and Warren Counties), and one proposed facility (Mercer County).

The proposed amendments to N.J.A.C. 7:27-27.4 and 7:27A-3.10(l)27 will have no economic impact on persons complying with the air pollution control rules. The proposed amendments to N.J.A.C. 7:27-27.4(b) and (d) will have no effect on the frequency or amount of compliance testing conducted, only on the manner in which these data are used to determine compliance. The proposed amendments to N.J.A.C. 7:27-27.4(h) will not affect the requirement to obtain preconstruction approval from the Department; it merely provides notice that a form of departmental preconstruction approval may be required under subchapter 8 or 22 and alerts the regulated community to look elsewhere so as to maintain compliance with other applicable air pollution control rules. The proposed deletion of the penalties at N.J.A.C. 7:27A-3.10(l)27 for violations of N.J.A.C. 7:27-27.4(h) will not affect the Department's ability to take enforcement action against owners or operators violating the preconstruction approval requirements of subchapters 8 or 22 since penalty provisions already exist at N.J.A.C. 7:27A-3.10 for these violations.

The proposed amendment to N.J.A.C. 7:27-27.9(c) will reduce the frequency of compliance reporting for control efficiency from quarterly to annually. This will have a positive economic impact on MSW incinerator owners and operators by reducing the number of reports required to be generated and mailed each year to the Department. The submission of one annual report will have a positive economic impact on the Department by reducing the amount of paperwork required to be processed. The proposed amendment to N.J.A.C. 7:27-27.9(f) does not change the requirement for owners and operators to certify compliance test reports submitted to the Department; it simply reflects a recodification of this requirement from N.J.A.C. 7:27-8.24 to N.J.A.C. 7:27-1.39 (see 26 N.J.R. 3943(b)) and will have no economic impact on either the regulated community or the Department.

For violators of the mercury emission standards (numerical and control efficiency), the economic impact of the proposed amendments to N.J.A.C. 7:27-27.4 and 7:27A-3.10(l)27 will vary according to the severity of the deviation from the standards or other violation. These amendments will allow for a more equitable assessment of penalties against violators of either standard, provided that the violator comes into compliance relatively quickly once notified by the Department of a violation.

Environmental Impact

The proposed amendments will have a positive impact on the environment. Changing the determination of compliance with the control efficiency standard and the requirement for reporting control efficiency data from quarterly to annual averaging should result in a decrease in the likelihood of noncompliance and will allow for a more consistent assessment of control efficiency. However, this change will not affect the responsibility of MSW incinerator owners and operators to comply with the numerical emission and control efficiency standards. The amendment at N.J.A.C. 7:27-27.4(h), regarding the requirement for obtaining preconstruction approval from the Department before altering any equipment or control apparatus, will have no environmental impact.

Executive Order No. 27 Statement

Executive Order No. 27(1994) requires administrative agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

Currently there are no Federal standards which control mercury emissions from MSW incinerators. Consequently, the proposed amendments do not impose standards that exceed those contained in Federal rules. These proposed amendments are not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law. However, pursuant to the Clean Air Act Amendments (CAAA) of 1990, the U.S. Environmental Protection Agency (EPA) has proposed, but not yet adopted, additional regulations at 40 CFR part 60, subparts Cb and Eb, which will apply to municipal waste combustors. The proposed regulations include a mercury emissions limit of 80 ug/dscm and an 85 percent control efficiency standard. The actual rule language adopted by EPA may change significantly in response to public comments and may require the Department to take future action in order to comply with Federal mandates. The Department has commented on the EPA proposals and recommended that the Task Force Report and any New Jersey mercury regulations, either proposed or adopted, be considered by EPA when it finalizes its rules.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will not impose additional reporting or recordkeeping requirements on small businesses, nor will they impose additional compliance requirements on small businesses. The amendments concern the manner in which reported data will be used to determine compliance, provide notice that a form of departmental preconstruction approval may be required under other current rules, allow for more equitable penalty assessment, and reduce the frequency of compliance reporting for control efficiency from quarterly to annually. Therefore, a regulatory flexibility analysis is not required.

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

7:27-27.4 Municipal solid waste (MSW) incinerators

(a) (No change.)

(b) Each owner or operator of a MSW incinerator of any [szie] **size** shall operate the MSW incinerator in accordance with provisions specified in either (b)1 or 2 below:

1. (No change.)

2. On and after January 1, 1996, mercury emissions at the exit of the control apparatus of any MSW incinerator, as determined pursuant to (c) below, shall not exceed 20 percent of the mercury emissions in the effluent from the MSW incinerator, prior to the inlet to the control apparatus, based on [each quarterly] **an annual** average.

(c) (No change.)

(d) Compliance with (b) above shall be determined [as follows:

1. Compliance with (b)1 above shall be determined annually based on the average of all compliance testing performed in a calendar year; or

2. Compliance with (b)2 above shall be determined quarterly based on the compliance testing performed during that quarter.] **based on the annual average of all compliance testing performed in a calendar year.**

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

(h) [Any person who is required to alter any equipment or control apparatus in order to operate in conformance with any requirement of this subchapter shall apply to the Department for a preconstruction permit in accordance with N.J.A.C. 7:27-8.3, by December 27, 1994.] **Any facility**

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subject to the requirements of this subchapter may also be subject to preconstruction requirements under N.J.A.C. 7:27-8 and 22. Compliance with this subchapter does not relieve an owner or operator from the obligation to comply with any applicable Federal, State, or local law.

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

7:27-27.9 Reporting and recordkeeping

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

(c) [If compliance is based on annual averages pursuant to N.J.A.C. 7:27-27.4(d)1 or (e), an] **The** owner or operator of a MSW incinerator shall report, for the preceding calendar year, the annual average mercury emissions **and annual average control efficiency** by February 28, or the next business day if February 28 falls on a weekend or holiday, of each year. [If compliance is based on quarterly averages pursuant to N.J.A.C. 7:27-27.4(d)2 or (e), an owner or operator of a MSW incinerator shall report the quarterly average control efficiency within 60 calendar days after completion of each calendar quarter.] Such reports shall be submitted to:

Assistant Director
Air and Environmental Quality Enforcement
Department of Environmental Protection
CN-422
Trenton, NJ 08625-0422

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

(f) Any owner or operator of a MSW incinerator who submits to the Department a report of compliance testing, including all test runs, shall certify that report in accordance with N.J.A.C. 7:27-[8.24] **1.39**.

(g) (No change.)

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

(a)-(k) (No change.)

(l) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation, are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

1.-26. (No change.)

27. The violations of N.J.A.C. 7:27-27, Control and Prohibition of Mercury Emissions, and the civil administrative penalty amounts for each violation are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
. . .					
N.J.A.C. 7:27-27.4(b)1 N.J.A.C. 7:27-27.4(b)2	Mercury Emissions Detected by Compliance Testing from Source Operation				
	1. Less than 25 percent [over] **deviation from** the allowable standard	$ 8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
	2. From 25 through 50 percent [over] **deviation from** the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
	3. Greater than 50 percent [over] **deviation from** the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
. . .					
[N.J.A.C. 7:27-27.4(h)	Submit Application for Preconstruction Permit	$ 2,000	$ 4,000	$10,000	$30,000]
. . .					

(m)-(o) (No change.)

(a)

BOARD OF COMMISSIONERS OF PILOTAGE

Rules of the Board of Commissioners of Pilotage of the State of New Jersey

Qualifications of Applicants for Apprenticeship

Proposed Amendment: N.J.A.C. 7:61-2.5

Authorized By: Board of Commissioners of Pilotage, Hon. Edward B. Pulver, President.

Authority: N.J.S.A. 12:8-2.

DEP Docket Number: 23-95-04.

Proposal Number: PRN 1995-329.

Submit written comments by July 5, 1995 to:

Hon. Thomas F. Daly
Secretary
Board of Commissioners of Pilotage of the State of New Jersey
P.O. Box 652
Newark, New Jersey 07101-0652

The Board proposal follows:

Summary

The Board of Commissioners of Pilotage of the State of New Jersey ("Board") established rules at N.J.A.C. 7:61 for the apprenticeship program with the Sandy Hook Pilots' Association which apprenticeship is a prerequisite to licensure by the Board as a New Jersey Sandy Hook pilot. See 24 N.J.R. 3477(a) and 3534(a). The Board proposes to amend N.J.A.C. 7:61-2.5(a) to define the vision requirements for an apprentice, to clarify the point at which the apprentice is to be the holder of a bachelor's degree and to establish a requirement that an apprentice be able to read and speak English. The Board further proposes to amend N.J.A.C. 7:61-2.5(b) to reduce the number of persons serving on the selection board from 10 to six. The Board also proposes the addition of N.J.A.C. 7:61-2.5(f) in order to maintain and utilize the ranked list as approved by the selection board for a two-year period.

The present standard of "normal" vision at N.J.A.C. 7:61-2.5(a) is ambiguous. The Board has determined that the visual standard required for apprentices must be defined because visual impediments, to a certain extent, present a materially enhanced risk of serious injury to both the apprentice and the general public. Apprentices along with the Sandy Hook pilots are responsible for the navigation of vessels that may be as much as 900 feet or more in length and carry hazardous material with the potential to cause massive environmental damage. The navigational aids, for example, buoys, ranges and lights on ranges and lighthouses, which must be utilized by apprentices and pilots are often small and difficult to see especially in bad weather conditions. There can be no compromise in color perception because it is the differentiation in the color of the lights of other vessels in the vicinity and the lights on aids to navigation that dictate actions that the pilot must take.

Moreover, because of the rigorous duties expected from a Sandy Hook pilot, such as meeting and boarding ships in open sea via a swinging rope ladder called a "Jacob's ladder" in all kinds of weather conditions, physical abilities are critical. In the matter of *McDonald v. Board of Commissioners of Pilots,* 523 *F. Supp.* 949 (S.D.N.Y. 1981), a ship pilot claimed that an age limitation imposed by the New York Board of Commissioners of Pilots violated his constitutional rights to equal protection and due process. He requested injunctive relief from the age limitation regulation. In support of its denial of a preliminary injunction, the court relied upon its findings that physical abilities were a sufficient component of a pilot's qualifications. As the court stated, "The court would have to find that physical abilities were completely unrelated to a pilot's task. Such a finding is impossible. . . ." *Id.* at 951.

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Certain visual impediments clearly preclude apprentices from safely performing pilotage activities since the apprentices, other ship pilots, the general public and the environment would otherwise be exposed to a materially enhanced risk of substantial injury. To some extent, visual impediments may be correctable and the risks, therefore, minimized. There are limitations, however, on the acceptability of aids to correct visual impediments since a ship pilot must have minimum uncorrected eyesight upon which to rely in the very possible event that aids, for example, eyeglasses or contacts, were lost by the ship pilot while boarding a ship or in other activity. In an effort to determine acceptable limitations on the ability to correct visual impediments, the Board has considered the requirements for visual acuity in nautical and related fields which vary from that of 20/20 uncorrected vision in each eye for entry into the U.S. Naval Academy (a waiver of this visual acuity standard is automatically considered if other visual acuity standards are met, if the candidate is otherwise medically qualified and if the candidate is otherwise exceptional; a naval aviator student, however, must have 20/20 uncorrected vision) and for U.S. Air Force pilots (upon entry) to that of the U.S. Coast Guard's requirement of 20/200 uncorrected vision in each eye correctable to 20/40 in each eye for an original license as master, pilot, operator, or certificate as able-seaman.

The Board has determined that 20/50 uncorrected vision which is correctable to 20/20 is appropriate with respect to apprentices. Although in most situations contacts or eyeglasses would be available to enable the apprentice to safely perform his or her duties, the Board cannot ignore the possibility as discussed above that the apprentice could lose such aids. Even if the apprentice was to carry spare eyeglasses or contacts, the spare lenses could just as easily be lost while boarding a ship or in other activity. The Board has determined that 20/50 uncorrected vision would enable the apprentice to marginally perform his or her duties in a safe manner in such event.

With respect to the U.S. Coast Guard's visual acuity standard, a Federal pilot whose uncorrected vision exceeds 20/40 in either eye cannot operate under the authority of his or her license unless corrective lenses are worn and spare lenses are carried on board while serving. 46 C.F.R. 10.202(f). Furthermore, a Federal pilot is often a member of the ship's crew who embarks and disembarks the ship at the berth as opposed to embarking the ship from a boat on the open sea. This boarding procedure serves to protect a Federal pilot from the possibility of losing his or her contacts or eyeglass while boarding as well as from exposure to inclement weather conditions. In addition, if a Federal pilot embarks the ship without corrective lenses and spare lenses, he or she can often be readily replaced by another Federal pilot at the berth. For these reasons, Federal pilots cannot be said to be analogous to Sandy Hook pilots in all cases; thus, the Federal standard would be inadequate to ensure that Sandy Hook pilots would be able to safely discharge all of their duties. Therefore, the Board has determined that the Coast Guard's visual acuity standard would not be appropriate for Sandy Hook apprentices. The Board, however, has determined to follow the Coast Guard requirement that the color perception of a Federal pilot be determined to be satisfactory by utilizing one of a number of specified tests. 46 C.F.R. 10.205(d)2.

In addition, the proposed amendment eliminates the specific requirements for the apprentice to have "normal hearing" and to be "free of speech impediment." The Board has determined that these standards are ambiguous and that it is unable to establish specific standards for such impediments. The Coast Guard handles its licensure of first class pilots by requiring an applicant to possess the hearing ability and general physical condition necessary to perform the duties which are being licensed unless extenuating circumstances warrant special consideration. 46 U.S.C.A. §7101(e); 46 C.F.R. 10.205(d)(4). This is the same standard which is already incorporated in the Board's regulations that require an apprentice to have "the physical ability to perform the rigorous duties required of a Sandy Hook pilot." N.J.A.C. 7:61-2.5(a)3. Therefore, in the event an applicant had a hearing impediment or speech impediment, the Board would make a determination on a case-by-case basis as to whether such impediment reasonably precludes the performance of the rigorous duties of a Sandy Hook pilot and whether such impediment could be reasonably accommodated to enable the apprentice to safely perform such duties.

The proposed amendment to this subsection also clarifies the point at which the apprentice must possess a bachelor's degree from an accredited college or university. The selection process is lengthy and, in addition, the Board is proposing an amendment to N.J.A.C. 7:61-2.5(b) to maintain the ranked list generated by the selection board for a two-year period; therefore, an otherwise qualified applicant may want to submit an application for apprenticeship prior to possessing a bachelor's degree but expecting to receive a bachelor's degree prior to being selected from the list. In the event an applicant is selected from the list prior to receiving a bachelor's degree, such applicant will be refused registration by the Board and the Board may select the next ranked applicant from the list.

Moreover, the proposed amendment establishes a requirement for an apprentice to demonstrate an ability to speak and understand English. Proficiency in English is a Coast Guard requirement for, among other things, a Master of Pilot Vessel's License issued with an endorsement as a First Class Pilot. 46 C.F.R. 10.201(c). An apprentice to the Sandy Hook Pilots' Association is required to obtain, among other things, that license and endorsement. N.J.A.C. 7:61-2.6(c). Therefore, if an applicant cannot demonstrate an ability to speak and understand English, he or she would be unable to satisfy the requirements of the apprenticeship program. More significantly, English is the language used in navigation rules, aids to navigation publications, emergency equipment instructions, machinery instructions, and radiotelephone communications instructions and, therefore, in order to safely perform his or her duties, an apprentice must be proficient in English.

The Board also proposes an amendment to N.J.A.C. 7:61-2.5(b) as to the number of members on the selection board. Based on its experience the Board has determined that the present system requiring the participation of two commissioners and three Sandy Hook pilots from each state (10 member selection board) is unwieldy, expensive and unnecessary to perform its function. Further, it is an intimidating experience for an applicant to face so large an interviewing committee. The Board has determined that having one commissioner and two Sandy Hook pilots from each state (six member selection board) as provided in the proposed amendments would afford each state adequate voice and representation without being overwhelming and cumbersome.

The present regulation is silent as to the number of applicants to be ranked on the list and the length of time that the ranked list generated by the selection board can be utilized by the Board for apprenticeship selection. Because the process is lengthy (about six months), expensive and time-consuming on the part of both the Board and apprentice applicants, the Board proposes the addition of N.J.A.C. 7:61-2.5(f) to provide that a ranked list of 10 applicants will be maintained and utilized by the Board for a two-year period after the date which it is approved by the selection board. Most significantly, having such a list would allow for the Board's immediate replacement of an applicant who was selected but opted not to take the position, who was unavailable or who dropped out during the apprenticeship program.

The proposed amendment is intended to be retrospective in that the Board plans to maintain and utilize the list which was approved by the selection board on June 13, 1994 for a two-year period; the list, therefore, will be used by the Board for apprentice selection until June 12, 1996. "A statute or regulation can be applied retrospectively where . . . the expectations of the parties warrant retroactive application." *Greek v. South Brunswick Tp.*, 257 *N.J. Super.* 94, 105-06 (App. Div. 1992), *certif. denied,* 130 *N.J.* 602 (1992), *certif. denied sub nom., Morris Industrial Builders, Inc. v. Township of South Brunswick,* _____ *U.S.* _____, 113 *S.Ct.* 1848, 123 *L.Ed.2d* 472 (1993); *Gibbons v. Gibbons,* 86 *N.J.* 515, 521-522 (1981). Because the application process demands significant time and expense from the parties involved—the Board, the Sandy Hook Pilots' Association as well as the apprentice applicants—it was generally expected by the parties that the list would be maintained and utilized for apprentice selection beyond the selection of just one apprentice. The proposed amendment merely defines that the time period during which it will be maintained and utilized is two years.

The Board has fixed a two-year time period because a longer time period would preclude the Board from considering persons who have become qualified subsequent to the last selection process and who may be better qualified than those applicants who were ranked lower on the list. The Board has also determined that after a period of approximately two years, the list becomes "stale" because the applicants on the list have probably taken other jobs. To the extent that an applicant who was on a prior list and who was not selected is still interested in an apprenticeship with the Sandy Hook Pilots' Association, such applicant can participate in the application process again. In this event, the proposed amendment provides that, although a new application should be completed and submitted, the applicant will not have to take the test(s) again. The applicant, however, will have to participate in the interview process again; this will ensure that the applicant is considered and scored by the same individuals—the members of the selection board are expected to be different with each interview process—who are interviewing the newest applicants. Tangentially, it should be noted that in order to have an approved list in place upon the expiration of the present list, the application process will be initiated approximately six months in advance of the expiration of the list.

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Social Impact

These proposed amendments will have a positive social impact because they clarify the physical requirements for a Sandy Hook Pilots' Association apprentice. Further, the proposed amendments streamline the apprenticeship selection process resulting in the greater efficiency of the Sandy Hook Pilots' Association in choosing highly qualified apprentices who will ultimately become ship pilots thereby reducing the risk of a serious maritime accident.

Economic Impact

Under the proposed amendments, apprentice applicants will still have to pay a reasonable fee to cover the costs of processing the applications and administering the requisite test. This limited financial obligation upon apprentice applicants will be lessened, however, by the maintenance of a list for two years as opposed to requiring that a new apprenticeship application be submitted for each apprenticeship opening. The streamlined apprenticeship selection process and the clarified physical requirements will enable the Sandy Hook Pilots' Association to administer its apprenticeship program more efficiently. That will result in a beneficial economic impact on the shipping industry which utilizes the New Jersey and New York port areas in that costly accidents and delays are avoided.

The proposed amendments do not impact State finances and do not require the allocation of additional financial resources to implement.

Environmental Impact

The proposed amendments will have a positive impact on the environment. The efficient functioning and high degree of competence of Sandy Hook pilots depends on apprentices whose selection meets the highest standards such that the risks of a maritime accident and subsequent harm to the environment are greatly reduced.

Executive Order No. 27 Statement

Governor Whitman's Executive Order No. 27(1994) requires that all State regulations include a statement as to whether the proposed regulation contains any standards or requirements which exceed the standards or requirements imposed by Federal law. This Order was effective on January 1, 1995.

While the regulation of pilots working in the navigable waters of the United States is clearly a regulation of commerce within the power of Congress, there exists a concurrent system of pilotage regulation. States have jurisdiction over foreign vessels and vessels sailing under register while Federally licensed pilots are, in general, required to be used on coastwise (domestic trade) vessels "enrolled," but not sailing under register. 46 U.S.C.A. §8502. Therefore, the New Jersey pilotage laws and regulations are exclusive in situations where a pilot is navigating foreign vessels and vessels sailing under register "bound in or over the bar of Sandy Hook or into any bays, rivers, harbors, or ports of the waters of this State between Sandy Hook, in the county of Monmouth and the city of Atlantic City, in the county of Atlantic." N.J.S.A. 12:8-35. The Board thereby states that the proposed amendments do not contain any standards or requirements which exceed the standards or requirements imposed by Federal law.

Regulatory Flexibility Statement

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Association or the practice of piloting may be deemed to constitute a "small business" within the meaning of the statute, the following statement is applicable:

The Board has determined that the proposed amendments will not impose new or additional reporting, recordkeeping, or other compliance requirements on small businesses. In fact, the proposed amendments by establishing a list of ranked apprentice applicants for a two-year period will reduce the present compliance requirements on small businesses for the selection of new apprentices. Maintenance of the list will be the responsibility of the Board and, therefore, such maintenance does not impose additional reporting or recordkeeping requirements on small businesses. All of the other proposed amendments merely clarify the requirements of the current regulations, or impose requirements on individual applicants.

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

7:61-2.5 Qualifications of applicants for apprenticeship

(a) A person wishing to be registered with the Commissioners as an apprentice shall present satisfactory evidence that he or she:

1. Is not less than 18 years of age;
2. Is of good moral character;
3. Is in good health, has [normal visual acuity and color perception, normal hearing, and is free of speech impediment, and] **a minimum uncorrected visual acuity of at least 20/50 in each eye, correctable to 20/20 in each eye, is able to satisfactorily pass one of the following tests for color perception without the use of color sensing lenses: Pseudoisochromatic Plates (Dvorine, 2nd Edition; AOC; revised edition or AOC-HRR; Ishihara 16-, 24-, or 38-plate editions); Eldridge-Green Color Perception Lantern; Farnsworth Lantern; Keystone Orthoscope; Keystone Telebinocular; SAMCTT (School of Aviation Medicine Color Threshold Tester); Titmus Optical Vision Tester; or Williams Lantern,** and in general has the physical ability to perform the rigorous duties of a Sandy Hook Pilot; [and]
4. Is the holder of a bachelor's degree from an accredited college or university **at the time of registration as an apprentice; and**
5. **Has an ability to speak and understand English.**

(b) Applicants shall be screened through an independent testing and review process and the results submitted to a selection board appointed by the Commissioners and consisting of [two] **one** New Jersey Commissioner[s], [two] **one** member[s] of the Board of Commissioners of Pilots of the State of New York as **may be** designated by the [New York Commissioners] **respective Boards of Commissioners,** [three] **two** New Jersey licensed Sandy Hook Pilots and [three] **two** New York licensed Sandy Hook Pilots as nominated by the respective state Sandy Hook pilots' associations. The availability of openings for applicant apprentices shall receive the widest dissemination by advertisement in area newspaper of general circulation and in appropriate trade journals. These requirements are designed to ensure that all who apply do so on an equal footing, and that those selected have the greatest ability, temperament and aptitude to be a ship's pilot.

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

(f) The Board shall retain a list of 10 applicants in order of preference as determined by the selection board. Such list shall be retained for a period of two years from the date it is approved by the selection board and, if during that period, it is determined that an additional apprentice is needed the Board shall select an applicant from that list in order of ranking on said list. If a selected applicant refuses registration or is unable to meet the requirements of apprenticeship at the time of registration, the Board shall select the applicant ranked next on the list. Upon subsequent selection(s) of applicants from the ranked list, any applicant who was deemed ineligible to meet the requirements of registration at the time of the last selection shall be selected if he or she now satisfies the requirements for registration. If, however, a selected applicant refuses registration, such applicant will be deleted from the ranked list and will not be considered upon subsequent selection(s).

HIGHER EDUCATION

(a)

OFFICE OF STUDENT ASSISTANCE
STUDENT ASSISTANCE BOARD

General Provisions for Tuition Aid Grant and Garden State Scholarship Programs; Tuition Aid Grant Program

Dependent/Independent Student Defined; Verification of Enrollment and Academic Performance; Exercise of Institutional Professional Judgment in the Determination of Family or Student Contribution

Proposed Amendments: N.J.A.C. 9:7-2.6 and 2.10
Proposed New Rule: N.J.A.C. 9:7-3.3

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-48.

Proposal Number: PRN 1995-319.

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Submit written comments by July 5, 1995 to:
Laura M. Rivkin, Esq.
Administrative Practice Officer
Office of Student Assistance
CN 540
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments and new rule are products of Office of Student Assistance (OSA) collaboration with the student aid community to improve the delivery of State grants and scholarships to students and institutions in New Jersey. To that end, these changes streamline the delivery process by decentralizing certain areas in that process and by providing greater consistency with Federal financial aid standards. Specifically, the changes would enable authorized financial aid personnel at participating institutions to make final determinations regarding student status and eligibility, particularly for Tuition Aid Grants (TAG). Also, the proposed amendments would rescind provisions addressing allowable circumstances for making dependency status changes as well as those governing the minimum acceptable standards for academic progress. Instead, institutions would be permitted to use the Federal Title IV student assistance procedures they already have in place, including use of professional judgment in evaluating a student's special circumstances.

New Jersey's long standing policy regarding student assistance delivery has been to maintain as much consistency as possible between the Federal definitions and determinations for student eligibility and those used in the TAG Program. In order to accomplish this and reduce the burden on students and campus administrative personnel, while protecting the public interest, each of the proposed amendments and new rule adheres to three principles: (1) eligibility determinations must satisfy all applicable Federal standards set forth under Title IV of the Higher Education Act of 1965, as amended, and implementing regulations and rules; (2) individual determinations regarding a student's unique circumstances must be made consistently across all sources of need-based financial aid, including Federal campus-based and State aid; and (3) the institution is obligated to share with the OSA material audit findings related to the application of standards or exercise of judgment at any time they are revealed in the course of an audit or program review. These elements will complement existing verification activity of applicant data, as well as additional OSA review mechanisms in development, to ensure institutional compliance with program requirements.

The proposed amendment to N.J.A.C. 9:7-2.6(b)1 expands the determination of an independent student with regard to a ward of the court to also include a student who was a ward of the court until age 18. This amendment maintains consistency and provides intended clarification between State and Federal student status determinations.

At N.J.A.C. 9:7-2.6(b)6i, ii and iii, OSA-imposed restrictions for determination of dependency status, which are now cumbersome and occasionally cause unintended disruptions of aid to needy students, are being deleted. These deletions and additions of new text in the provisions for determining independent student status by reason of other unusual circumstances are designed to provide consistency with Federal standards, grant greater authority to financial aid administrators in student status decisions, and increase administrative flexibility in the documentation of special circumstances.

The regulatory language in N.J.A.C. 9:7-2.10(a) dealing with specific measures of academic progress and standards is being deleted since it provides for separate standards in measuring a student's academic progress from those in current Federal rules. When New Jersey's standards for academic progress were first promulgated by the Student Assistance Board (SAB), the standards were compatible with Federal regulations, but this is no longer the case. As a result, many institutions have the burden of administering two or more entirely separate systems of measuring progress and are frequently put in the position of having to deny students aid from one source while approving aid from another. The Federal provisions for satisfactory progress under Title IV are comprehension and incorporate minimum expectations required by law for all institutions in measuring and maintaining all phases of academic progress. These provisions must also conform to the standards of the school's accrediting agency. The OSA believes that the required Federal provisions for satisfactory academic progress, when applied appropriately by institutions, would be adequate to protect State funds and maintain the integrity of New Jersey's grant and scholarship programs.

Deleted text in N.J.A.C. 9:7-2.10(b) reflects the fact that proposed New Jersey standards for academic performance and satisfactory academic progress are now to be consistent with Federal standards. Therefore, it is no longer necessary for the OSA to receive copies of individual institutional standards for State programs. The text proposed for subsection (b) is merely a recodification from subsection (d) and is not new language.

The proposed amendment to N.J.A.C. 9:7-2.10(c) specifically aligns State standards of academic performance and satisfactory academic progress with the same standards that institutions adopt to determine eligibility for Federal student aid programs.

N.J.A.C. 9:7-2.10(e) and (f) addressing measures of academic progress and standards are being deleted since the OSA believes that the required Federal provisions for satisfactory academic progress, when applied appropriately by institutions, would be adequate to protect State funds and maintain the integrity of New Jersey's grant and scholarship programs for reasons described in the proposed amendment in subsection (a).

This proposed deletion and addition of N.J.A.C. 9:7-2.10(h) are technical changes which delete the reference to State minimum standards and refer to the new standards being proposed.

N.J.A.C. 9:7-2.10(i) concerning appeals is being deleted since the proposed requirements for academic progress for State grant and scholarship programs provide institutions with the final authority to grant exceptions and to develop their own appeal policies and procedures consistent with Federal requirements.

In order to continue to maintain the integrity of State grant and scholarship programs and protect the public interest, proposed N.J.A.C. 9:7-2.10(f) requires institutions to notify OSA of any audit exceptions related to the determination of academic progress at any time they are revealed.

Proposed new rule N.J.A.C. 9:7-3.3 would permit institutions to exercise professional judgment in determining the student's or family's expected contribution towards the cost of higher education when special circumstances exist. Federal Title IV guidelines permit aid administrators, on the basis of adequate documentation, to make adjustments to the cost of attendance or the values of data items required to calculate the expected student or parent contribution in light of special circumstances. This new rule would recognize and accept as final the eligibility determinations of authorized financial aid personnel. In the event of an error in payment to a student, the new rule would also provide OSA with the legal authority to require refunds of State monies from the institution.

Social Impact

To improve the delivery of State student assistance in New Jersey, the proposed amendments and new rule provide greater authority for financial aid personnel at participating institutions to make final determinations regarding student status and eligibility, particularly for Tuition Aid Grants. For students and families, this would alleviate the delays and confusion inherent in some processes that presently require approval by the OSA. These proposed regulatory changes will also significantly reduce the burden for administering financial aid programs at New Jersey colleges and universities. New Jersey's long-standing policy regarding student assistance delivery has been to provide a single, integrated application form by which students could apply for both Federal and State financial aid, and therefore to maintain as much consistency as possible between the Federal definitions for student eligibility and those used in the TAG Program. This consistency is essential to help avoid instances in which the eligibility of an applicant is treated one way for State aid programs and another for Federal student aid. The proposed amendments rescind cumbersome restrictions and standards which occasionally caused unintended disruptions of aid to needy students. The use of institutional professional judgment in making adjustments to the cost of attendance or the values of data items required to calculate the expected student or parent contribution allows for the fair treatment of an eligible applicant with special circumstances, such as unusual medical expenses, unemployment, or death of a family member, after the application is filed.

Economic Impact

The proposed amendments and new rule are expected to reduce the administrative, and hence economic, burden in offering financial aid programs at New Jersey colleges and universities. By bringing State standards in line with Federal standards in determinations of State aid, there likely will be some students who previously did not qualify for State student assistance who now do qualify. But the reverse is also true in that certain students who were previously deemed eligible may lose their award eligibility for a given term or academic year. The most probable result is that gains in eligibility will offset losses. There is no impact on the total TAG appropriation since these funds will continue to be distributed to qualified students who meet all eligibility and financial need criteria to receive an award. Moreover, the proposed changes will not affect the maximum number of award payments which

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students may receive because such limits are specified in N.J.A.C. 9:7-2.11, Payments.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because these proposed amendments and new rule adopt the same standards and policies which institutions have in place for Federal Title IV student assistance programs and, therefore, a Federal exceedance analysis is not applicable to the rulemaking.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and new rule not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rule provide greater authority for authorized institutional financial aid personnel to make final determinations regarding student status and eligibility for State grant and scholarship programs.

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

9:7-2.6 Dependent/independent student defined

(a) (No change.)

(b) An individual meets the requirements of this section if such individual:

1. Is an orphan or ward of the court[;] or **was a ward of the court until age 18; or**

2.-5. (No change.)

6. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances **as provided under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087vv, and its implementing regulations and rules**. For purposes of receiving State financial assistance as an independent student due to unusual circumstances, [at least one of] the following [criteria must be met] **conditions apply**:

[i. The student has been separated from his or her parents due to an unsafe home environment. Documentation of such status must be received from a court, social service agency, or other similar source acceptable to the director of the applicable student assistance program within the Department of Higher Education.

ii. The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5 (or as attested to by a social service agency or respected member of the student's community and acceptable to the director of the applicable student assistance program within the Department of Higher Education), and is living with a relative who is providing support to the student.

iii. The student's economic and personal circumstances are of such a unique or unusual nature that denial of independent student status would create an unjust hardship upon the student. Documentation of eligibility under this subparagraph must be acceptable to the director of the applicable student assistance program within the Department of Higher Education.]

i. Determinations of independence must satisfy all applicable Federal standards set forth under Title IV of the Higher Education Act of 1965, as amended, and its implementing regulations and rules;

ii. Individual determinations of independent student status for State student aid programs shall be made in a manner consistent with the institutional policies regarding the awarding of all need-based financial aid, including Federal and State aid; and

iii. The institution shall share with the Office of Student Assistance any material findings or audit exceptions related to the determination of dependency status at any time they are revealed in the course of an audit or program review.

(c) (No change.)

9:7-2.10 Verification of enrollment and academic performance

(a) Before payment may be made to an eligible student, the institution shall have satisfactory evidence that the student is eligible for State grant and/or scholarship assistance, has registered as a full-time student for an academic term, and that the student is meeting minimum standards for academic performance and academic progress. [Degree or certificate programs must have a minimum requirement equal to the equivalent of 24 semester hours and be at least one academic year in duration.]

(b) [Each institution shall provide copies of its minimum standards for academic performance and satisfactory academic progress to the Department of Higher Education. Thereafter, institutions are required to provide copies of such standards when changes occur.] **Students receiving State financial assistance under the student assistance programs administered by the Student Assistance Board shall remain in good academic standing as defined by the institution which they are attending.**

(c) [The] **For purposes of determining State financial assistance eligibility, the** Student Assistance Board shall recognize [minimum] **the same** standards for academic performance and satisfactory academic progress that an institution adopts [for determining State financial assistance eligibility if these standards are the same as or stricter than the standards outlined in this section] **to determine eligibility for Federal student aid programs under Title IV of the Higher Education Act of 1965, as amended, and its implementing regulations and rules.**

[(d) Students receiving State financial assistance under the student assistance programs administered by the Student Assistance Board shall remain in good academic standing as defined by the institution which they are attending.

(e) Students receiving State financial assistance under the student assistance programs administered by the Student Assistance Board shall meet the following Statewide minimum standards of academic progress:

1. After earning the first 12 college-level credits, all students receiving State financial assistance shall earn either an additional 12 college-level credits during every semester in which they receive State financial assistance, or a minimum of 24 college-level credits during every academic year of payment.

2. The number of award payments students may receive in order to earn their first 12 college-level credits depends on their level of preparation for college work and the admission policy of their institution:

i. Students in the Educational Opportunity Fund (EOF) Program, at any institution, may receive up to three semesters of payments to earn the first 12 college credits or up to four payments to earn the first 24 credits. The definition of college credits is subject to the provisions of N.J.A.C. 9:11-1.10.

ii. Students attending open access county colleges and who are required to pursue a remedial/developmental or bilingual (ESL) curriculum of 12 or more credits may receive up to three semesters of payments to earn the first 12 college-level credits or up to four payments to earn the first 24 credits.

iii. All other students at two-year and four-year institutions must earn either 12 college-level credits after the first two award payments or 24 credits after the first three award payments.

(f) Students who are unable to earn 12 credits in a semester may remain eligible if they have maintained an average academic progress of 12 credits or more per semester of award payments.]

[(g)]**(d)** The academic standing and progress of all students receiving State financial assistance must be monitored by institutions at least once a year, prior to the fall semester.

[(h)]**(e)** Students who fail to achieve the [above minimum] standards **set forth in this section** shall be ineligible to receive State financial assistance under the programs administered by the Student Assistance Board until such time as the institution certifies that they are in good academic standing and are achieving satisfactory academic progress.

[(i) Students and institutions shall have the right to appeal the denial of State financial assistance based upon these guidelines through the established appeal procedures (see N.J.A.C. 9:7-2.15).]

(f) The institution shall share with the Office of Student Assistance any material findings or audit exceptions related to the determination of academic progress at any time they are revealed in the course of an audit or program review.

9:7-3.3 [(Reserved)] **Exercise of institutional professional judgment in the determination of family or student contribution**

(a) For purposes of administration of State student aid programs, the Office of Student Assistance shall accept eligibility determinations by participating institutions based on the exercise of professional judgment regarding the calculation of the family or

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student's ability to contribute to the cost of higher education, providing the following conditions are met:

1. Determinations shall satisfy all applicable Federal standards set forth under Title IV of the Higher Education Act of 1965, as amended, and its implementing regulations and rules. Pursuant to Title IV standards, the determination shall relate to a given student's special circumstances and shall be documented in the student's campus file;

2. Individual determinations for State student aid programs shall be made in a manner consistent with the institutional policies regarding the awarding of need-based financial aid, including Federal and State aid; and

3. The institution shall share with the Office of Student Assistance any material findings or audit exceptions related to the exercise of professional judgment at any time they are revealed in the course of an audit or program review.

(b) The institution may be required to refund to the Office of Student Assistance, upon request, any State student aid funds which are paid to a student as a result of the institution's failure to exercise professional judgment in accordance with this section.

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Accelerated Death Benefits

Proposed New Rules: N.J.A.C. 11:4-30

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:25-18 and 17B:27-25.

Proposal Number: PRN 1995-353.

Submit comments by July 5, 1995 to:

Donald Bryan, Assistant Commissioner
Regulatory Affairs
Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

These proposed new rules will enable the Department to effectively regulate accelerated death benefit provisions contained in individual and group life insurance products.

Accelerated death benefit policy provisions or riders enable insurers to pay part or all of the life insurance death benefit to insured policy owners or certificate holders before they die. Payments are made under certain conditions referred to as "qualifying events" which relate to the health of the insured.

The new rules are derived partly from Departmental guidelines which were recently revised on comments from the industry and the Department's own reevaluation of the types of accelerated death benefit options being offered.

The purpose of the new rules, as stated at N.J.A.C. 11:4-30.1, is to regulate the content, filing and disclosure of information to individual policy owners and group certificate holders regarding accelerated death benefit provisions of life insurance policies. N.J.A.C. 11:4-30.2 applies these rules to all accelerated death benefit provisions of individual and group life insurance policies delivered or issued for delivery in New Jersey. Definitions of terms including "accelerated death benefits" and "qualifying event" are set forth at N.J.A.C. 11:4-30.3.

N.J.A.C. 11:4-30.4 provides that accelerated death benefit provisions in New Jersey will be permitted in the form of a total or partial surrender of the policy, or a lien on the death benefits. The rules relating to partial surrenders are set forth at N.J.A.C. 11:4-30.5, and rules relating to liens are found at N.J.A.C. 11:4-30.6. Payment options, including lump sum and periodic payments, are set forth at N.J.A.C. 11:4-30.7.

N.J.A.C. 11:4-30.8 identifies required, permitted and prohibited contract terms. Rules relating to the exercise of the option to accelerate payment of death benefits are stated at N.J.A.C. 11:4-3.9. N.J.A.C. 11:4-30.10 contains form submission requirements. Illustration requirements are set forth at N.J.A.C. 11:4-30.11. Various kinds of discrimination are prohibited by N.J.A.C. 11:4-30.12. N.J.A.C. 11:4-30.13 provides for severability and N.J.A.C. 11:4-30.14 states that previously filed forms not in compliance with the new rules will be deemed withdrawn.

Social Impact

The proposed rules will inform insurers of the standards the Commissioner requires to be met by the policies, contracts or riders which include an accelerated death benefit option. The rules will assist insurers in the submission of materials for filing and expedite the Department's review process.

New Jersey consumers will benefit from the promulgation of these rules, especially the rules which provide for disclosure through use of illustrations, prohibit discrimination and identify contract terms that are required, permitted or prohibited in accelerated death benefit provisions.

Economic Impact

These proposed new rules set forth standards for the approval of policy form provisions relating to accelerated death benefits. Since most insurers have already developed policies and procedures relating to accelerated death benefits and filed such forms with the Department, these rules will have no appreciable economic impact on insurers. These proposed rules do not mandate any costs because these benefits are not required to be offered. No special professional or consulting services are required.

However, the rules do liberalize the Department's position on acceptable accelerated death benefit provisions. As a result, some insurers may voluntarily choose to re-file policy forms that meet these new standards. Consequently, the option should become more widely available to insureds.

Insureds, particularly terminally ill insureds in financial need, will benefit from the proposal because they may be provided with an additional option for no additional premium.

The rules may increase competition for "viatical companies" and thus have an adverse economic impact on such entities. These companies accept assignment of life insurance policy proceeds in exchange for a cash payment to the policyowner when death is imminent.

The Department anticipates no additional costs in monitoring compliance with the new rules.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because proposed N.J.A.C. 11:4-30 is not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The Department believes that few, if any, insurers subject to the proposed new rules are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Additionally, the new rules impose no undue burden or adverse economic impact upon insurers which may qualify as "small businesses."

Compliance with the proposed new rules requires no additional reporting and should impose little or no change in the companies' present operations. Insurers presently maintain, or otherwise provide for, all services which may be required in order to comply with the new rules. All companies, large and small, should be able to easily absorb the minor administrative expenses that may result from the promulgation of these rules.

Because the cost of compliance with these proposed new rules is minimal and represents no adverse economic impact upon small businesses, no exceptions for compliance by small insurers have been incorporated into the rules.

Full text of the proposed new rules follows:

SUBCHAPTER 30. ACCELERATED DEATH BENEFITS

11:4-30.1 Purpose

The purpose of these rules is to regulate the content, filing and disclosure of information to individual policy owners and group certificate holders with respect to accelerated death benefit provisions of life insurance policies.

11:4-30.2 Application and scope

These rules shall apply to all accelerated death benefit provisions of individual and group life insurance policies delivered or issued for delivery in this State on and after the effective date of these rules.

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11:4-30.3 Definitions

The following terms, when used in this subchapter, shall have the following meanings:

"Accelerated death benefits" means benefits payable under a life insurance contract:

1. To the policy owner or certificate holder, during the lifetime of the insured, when the insured is reasonably expected to have a drastically limited life span;

2. Which reduce the death benefit otherwise payable under the contract through a total or partial surrender of the contract or imposition of a lien upon the death benefits; and

3. Which are payable upon the occurrence of a single qualifying event resulting in the payment of a benefit amount fixed at the time of acceleration.

"Commissioner" means the Commissioner of the Department of Insurance, State of New Jersey.

"Qualifying event" means a medical condition which is reasonably expected to result in a drastically limited life span for the insured, such limitation to be specified in the contract; for example, a remaining life span of 24 months. A qualifying event also includes those conditions which result in a drastically limited life span and which are reasonably expected to require continuous confinement in an eligible institution, as defined in the contract, until the death of the insured; and any other qualifying events which the Commissioner may approve.

11:4-30.4 Permitted forms of accelerated death benefit provisions

Accelerated death benefit provisions will be permitted in the form of either a total or partial surrender of the policy or a lien on the death benefits.

11:4-30.5 Partial surrender

(a) Under the partial surrender approach, the insured is permitted to accelerate the payment of a fixed percentage of the death benefit, which percentage is specified in the contract, through a partial surrender of the contract. The cash value and premium of the policy are reduced by the same fixed percentage as the death benefit.

(b) The following requirements apply to accelerated death benefit options which utilize the partial surrender approach.

1. The amount of the accelerated death benefit may be applied to repayment of an outstanding policy loan but only up to the amount of the outstanding policy loan multiplied by the percentage of the death benefits which have been accelerated. For example, where a policy owner or certificate holder has a death benefit of $100,000 with an outstanding policy loan of $20,000 and seeks to accelerate the payment of $25,000 or 25 percent of the death benefit, the $25,000 may be applied to repay up to 25 percent of the outstanding policy loan of $20,000. Thus, of the $25,000 accelerated payment, $5,000 may be applied to repayment of the policy loan and $20,000 may be paid to the policy owner or certificate holder.

2. Under the partial surrender method, premiums are reduced by the fixed percentage of the death benefits which are accelerated and may be further reduced according to some defined formula, or become paid-up.

3. The insurer may pay the policy owner or certificate holder a present value of the death benefit which is being accelerated. The present value calculation shall be based on any actuarial discount appropriate to the policy design. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract and actuarial memorandum. The maximum interest rate shall not exceed the greater of:

i. The current yield on 300-day treasury bills; or

ii. The current maximum statutory adjustable policy loan interest rate.

11:4-30.6 Lien

(a) Under the lien approach, the payment to the policy owner or certificate holder of the accelerated death benefit is treated as a lien on the death benefits of the contract. Expense charges may be added to the lien. Access to cash value may be restricted to the excess of the cash value over the sum of the lien and any other outstanding policy loans.

(b) The following requirements apply to accelerated death benefit provisions which utilize the lien approach.

1. The lien may only be made against the death benefit, not against the cash value.

2. Interest bearing liens are permitted. The interest rate accrued on the portion of the lien which is equal to the cash value of the contract shall be no more than the policy loan interest rate stated in the contract. For the amount of the lien in excess of such cash value, the interest rate or interest rate methodology as a whole must be based on sound actuarial principles and disclosed in the contract and actuarial memorandum. The maximum interest rate for the lien in excess of cash value shall not exceed the greater of:

i. The current yield on 300-day treasury bills; or

ii. The current maximum statutory adjustable policy loan interest rate.

3. The amount of the lien and any interest thereon may not exceed the net amount at risk, that is, death benefit less cash value. Interest shall not be charged on the lien once the lien equals the net amount at risk.

11:4-30.7 Payment options

(a) Contract payment or settlement options shall include options to receive the accelerated death benefit in lump sum or in periodic payments without life contingencies.

1. In no event shall the amount payable as a lump sum be less than the acceleration percentage multiplied by the current cash value less outstanding policy loans. The current cash value shall include any termination dividend payable on the surrender of the policy.

2. Periodic payments with life contingencies are not permitted.

3. All settlement options shall specify what occurs if the insured dies before all payments of the accelerated death benefit are made.

4. The interest rate used to calculate any present value of the settlement option shall be that assumed in calculating the original payments.

(b) Accelerated death benefits shall not be payable to the extent that the policy or certificate is assigned, except when assigned to the insurer as security for a policy loan. In the case of a partial assignment, only that portion of the death benefit which has not been assigned may be accelerated.

(c) If the insured dies after electing to receive accelerated death benefits but before receiving such benefits, the election shall be cancelled and the death benefit paid pursuant to the policy.

11:4-30.8 Terms of accelerated death benefit contract provisions

(a) The following are required terms:

1. Accelerated death benefit provisions shall specify the procedure to be followed to accelerate the payment of death benefits. Insurers are subject to N.J.S.A. 17B:25-11 with respect to processing requests to accelerate the payment of death benefits.

2. Accelerated death benefit provisions shall provide that the option may be cancelled at any time upon the request of the policy owner in the case of individual insurance or the insured in the case of group insurance.

3. If the policy lapses due to nonpayment of premium, the policy owner or insured shall have the right to reinstate the option on the same, or more favorable, terms as contained in the individual policy or group certificate.

4. Accelerated death benefit provisions shall provide that when the conditions for payment are met, including the occurrence of a qualifying event, the payment of all or a portion of the death benefit will be accelerated. The provision may limit the percentage or dollar amount of the benefits whose payment may be accelerated.

5. Accelerated death benefit provisions shall describe the effect of exercise of the option to accelerate payment on premiums, cash values, loan values and coverage on another insured, where applicable.

6. Accelerated death benefit provisions shall be permitted in group life insurance contracts and certificates only if the insured has all rights of ownership concerning election and receipt of the accelerated death benefit.

(b) The following are permitted terms:

1. Accelerated death benefit provisions may provide for the examination of the insured at the insurer's expense. These provisions may also specify that in the event of a denial of a claim, a referee will be appointed or an additional medical opinion will be obtained.

2. The insurer may include in the accelerated death benefit provision a waiver of premium for the underlying policy upon the occurrence of a

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qualifying event regardless of whether a waiver of premium provision is contained in the underlying policy.

3. The insurer may deduct an expense charge in determining the accelerated death benefit provided that such expense charge is disclosed in the contract and actuarial memorandum.

(c) The following are prohibited terms:

1. Accelerated death benefit provisions shall not contain exclusions or restrictions as to coverage which are not also exclusions and restrictions in the base policy.

2. Accelerated death benefit provisions shall not require that the cause of the terminal condition first manifest itself or be diagnosed after issuance of the individual policy or rider or the group certificate.

3. Accelerated death benefit provisions shall not contain a waiting period requirement (except in the case of presumed, as opposed to diagnosed, terminal illness). A requirement that the individual policy or rider or the group certificate be in force past the incontestable period is a prohibited waiting period requirement.

4. Accelerated death benefit provisions shall not contain any restrictions on the use of the benefit.

5. The insurer shall not require a premium charge or cost of insurance charge for the accelerated benefit.

6. Accelerated death benefit provisions shall not require that upon exercise of the option to accelerate payment of a portion of the death benefits less than the full amount of such benefits the insured forfeits the residual coverage.

7. The insurer shall not include an aggregate limit provision which caps the accelerated death benefits payable for all contracts issued by the insurer and its subsidiaries and affiliates.

11:4-30.9 Exercise of the option to accelerate the payment of death benefits

(a) When a portion of the coverage remains after payment of the accelerated death benefit, the following requirements apply:

1. The individual policy or group certificate shall be modified by an endorsement which includes a statement of cash values, policy loans (including liens), premiums and death benefits following acceleration.

2. The dividends or non-guaranteed elements credited thereon shall not discriminate between policies whose death benefits have been reduced through acceleration and policies originally issued in the amount of the reduced death benefits.

3. The accidental death benefit provision, if any, in the policy or rider shall not be affected by the payment of the accelerated death benefit.

(b) When the full amount of the death benefit is accelerated, the individual policy or group certificate shall terminate upon the election of acceleration of the benefit.

(c) The option to accelerate shall be incontestable on the same, or a more favorable, basis as the individual policy or rider or the group certificate.

11:4-30.10 Form submission requirements

(a) Pursuant to N.J.S.A. 17B:25-18 and 17B:27-25, individual and group policies, riders and endorsements and group certificates with accelerated death benefit provisions must be filed by the Commissioner before they are delivered or issued for delivery in this State.

(b) The following requirements apply to the submission of accelerated death benefit forms to the Department.

1. The material submitted by the insurer to the Department shall disclose the types of forms with which this benefit will be offered, any underwriting restrictions involving face amount or age, and whether the form is intended for use with new issues and/or in force business.

2. The material submitted by the insurer to the Department shall include a specimen issue of the illustrations provided to the policy owner or certificate holder prior to or concurrent with the election of the accelerated death benefit option and an explanation of how and when the illustration will be provided. See N.J.A.C. 11:4-30.11.

3. The material submitted by the insurer to the Department shall include all advertising to be used in connection with the accelerated death benefit option.

4. Where coverage is provided in both the base policy and one or more riders and the insurer elects to accelerate death benefits in a certain sequence (such as whole life, then term, then paid up additions), the insurer must demonstrate that the selected sequence provides the most favorable settlement in all cases.

5. Where a form links interest rates or charges to indices such as the 300-day treasury bill, the form shall provide that if the named index is discontinued, the insurer will use an appropriate substitute index subject to the approval of the Department of Insurance.

11:4-30.11 Illustrations

(a) Prior to or concurrent with the election of the option to accelerate the payment of death benefits, the policy owner or certificate holder shall be given an illustration demonstrating the effect of the acceleration of the payment of death benefits on the cash value, death benefit, premium and policy loans (including policy liens) of the particular contract involved. The illustration shall display any premium or group contribution necessary to continue coverage following the acceleration. An illustration with representative examples intended for use on a general basis is not satisfactory.

(b) The illustration shall display all expense and interest charges associated with accelerating the death benefit.

11:4-30.12 Discrimination

(a) Insurers shall not discriminate among insureds on the basis of qualifying events covered under the policy.

(b) Conditions for payment of accelerated death benefits may not be based on type of disease or the fact of institutionalization. However, it is not discriminatory to presume that a person who has been confined to a nursing home for six months and is expected to be confined until death is terminally ill.

11:4-30.13 Severability

If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

11:4-30.14 Effect on previously filed forms

Forms which have been filed by the Commissioner pursuant to N.J.S.A. 17B:25-18 and 17B:27-25 which contain accelerated death benefit provisions which are not in compliance with these rules shall be deemed withdrawn as of the effective date of these rules.

(a)

DIVISION OF PROPERTY AND CASUALTY

Personal Private Passenger Automobile Insurance Eligible Person Qualifications; Underwriting Rules for Eligible Persons

Proposed Repeal: N.J.A.C. 11:3-9.2
Proposed Amendments: N.J.A.C. 11:3-34.4 and 35.4

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

Authority: N.J.A.C. 17:1C-6(e), 17:29C-7 and 17:33B-13.

Proposal Number: PRN 1995-314.

Submit comments by July 5, 1995 to:

Donald Bryan, Assistant Commissioner
Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

These proposed amendments seek to reconcile the statutory provision that requires personal private passenger automobile insurers to provide coverage to all eligible persons (N.J.S.A. 17:33B-15) with the provision that permits an insurer to cancel a private passenger automobile policy when a named insured or operator under the policy has had his or her driver's license suspended or revoked during the policy period (N.J.S.A. 17:29C-7(b)).

N.J.S.A. 17:33B-15 requires auto insurers to provide coverage to all

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"eligible persons" as defined at N.J.S.A. 17:33B-13. This requirement was enacted in 1990 and became effective in 1992. A preexisting statute, N.J.S.A. 17:29C-7 which was not amended in 1990, permits the insurer to cancel the policy under which a suspended or revoked driver is covered. By definition, a suspended driver is not an "eligible person" who is entitled to insurance. Cancelling a household policy that covers a suspended driver, however, affects other "eligible person" drivers insured under the policy. Thus when a driver insured under a household policy receives a suspension of license, the insurer is subject to seemingly conflicting direction: N.J.S.A. 17:29C-7 permits the insurer to cancel or nonrenew the policy; N.J.S.A. 17:33B-15 prohibits it from failing to provide coverage to other household members who are "eligible persons." The problem is particularly acute where the eligible person is married to a suspended driver because N.J.S.A. 39:6A-2g defines both spouses as "named insureds" under an auto policy.

Present rules do not address how to resolve the conflict either when a new application is made or when an insurer seeks to cancel a policy pursuant to N.J.S.A. 17:29C-7 during the term of the policy. These proposed amendments are intended to address these limited, though problematical, circumstances as follows:

1. A policy insuring eligible persons may be cancelled during the policy term when the driver's license of a named insured or operator of an automobile insured under the policy is suspended or revoked for one or more specifically enumerated serious motor vehicle violations. If coverage is cancelled, the insurer may decline to insure eligible persons insured under the policy for one policy period, not exceeding one year.

2. Coverage of eligible persons may not be cancelled as the result of the suspension or revocation of the driver's license or motor vehicle registration of a named insured or operator for any other reasons.

3. New applicants for insurance may not be declined coverage in the voluntary market because of the presence in the household of a person whose driver's license or motor vehicle registration has been suspended or revoked, unless the suspended operator has been convicted of driving while revoked or suspended, or is otherwise demonstrated to have driven an automobile during the period of suspension.

In proposing these amendments, the Department notes that they do not alter present rules at N.J.A.C. 11:3-8 concerning the nonrenewal of policies. Additionally, they do not change N.J.A.C. 11:3-35.5(d), which permits the insurer to consider the automobile insurance eligibility points (eligibility points) (see N.J.A.C. 11:3-34) of all drivers in the household when rating a policy.

To date the Departments interpretation has been that an eligible person applicant is entitled to coverage despite the presence in the household of a suspended driver, even if the suspended driver is the spouse of the eligible person applicant and even if the eligible person applicant requests coverage for more than one automobile. The Department developed this interpretation case-by-case in deciding appeals filed pursuant to N.J.S.A. 17:33B-17 and N.J.A.C. 11:30-33. Public policy would seem to militate in favor of a different result, however, in circumstances when the suspended driver is found to have operated an automobile during the period of suspension.

The Department is mindful of the increased risk when a suspended or revoked driver resides in the household if that suspended driver operates an automobile. In order to strike a fair balance between the needs of otherwise eligible persons and the limits of auto insurers' duty to provide coverage to eligible persons, the Department believes it reasonable to exclude from the category of eligible persons those other household members when it can be reasonably shown that a suspended driver has operated an automobile or has been convicted of operating a vehicle while suspended.

N.J.S.A. 17:33B-13(g) defines "eligible person" not to include any person "who possesses such other risk factors as determined to be relevant by rule or regulation of the commissioner." These risk factors exist where a driver in a household has had his or her license suspended and the suspended driver has continued to operate an automobile. These proposed amendments would provide that when there is a demonstration that a suspended driver has operated a vehicle during the period of suspension, members of that suspended driver's household who are named or otherwise insured under the policy are not "eligible persons" as defined at N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.4. These drivers would be qualified for coverage under the Personal Automobile Insurance Plan (PAIP). (See N.J.A.C. 11:3-2.8.)

The determination that an otherwise eligible person would not be eligible for coverage in the voluntary market under this proposal occurs when the suspended or revoked driver is convicted of a violation of N.J.S.A. 39:6B-2 or has been operating a motor vehicle while suspended or revoked (for example, when the suspended driver was found to be operating the vehicle resulting from the investigation of a claim, or when the suspended operator is convicted of any other motor vehicle violation during the period of suspension). Under such circumstances, the insurer could cancel the policy and other insureds would not be eligible for coverage in the voluntary market.

In the case of cancellation pursuant to N.J.S.A. 17:29C-7, these proposed amendments seek to distinguish between driver's license/registration suspensions resulting from serious motor vehicle violations that represent increased insurance risk, and administrative or other suspensions that do not necessarily indicate increased risk. When the driver's license or registration of a driver insured under a policy has been suspended or revoked for a serious motor vehicle violation, these amendments would give effect to N.J.S.A. 17:29C-7(A)(b) by permitting cancellation of the policy, even though such cancellation terminates coverage of eligible persons. When the suspension results from other reasons, coverage for eligible persons must be continued. The Department believes that this resolution of the applicable conflicting authorities represents a reasonable attempt to give effect to the apparent intent of the Legislature as expressed in both provisions.

Where an insurer chooses to cancel a policy because of the suspension or revocation of an insured's or operator's driver's license or motor vehicle registration in accordance with N.J.S.A. 17:29C-7(A)(b), its action must be based on underwriting rules filed and approved with the Department of Insurance ("Department"). The Department therefore also proposes to amend N.J.A.C. 11:3-35.4, underwriting rules for eligible persons, to permit insurers to file for approval underwriting rules which allow an insurer to cancel a policy in accordance with the foregoing terms. When an eligible person is properly cancelled in accordance with approved underwriting rules, these proposed amendments also permit the cancelling insurer to decline coverage to those cancelled for one policy term. These amendments would not affect the obligation of other insurers to provide coverage upon application of other eligible persons in the household and is intended to avoid the futility of issuing a cancellation to a person who then immediately re-applies.

These proposed amendments will also resolve a second inconsistency between N.J.S.A. 17:33B-15 and 17:29C-7.1b and c. The latter statute authorizes an insurer to nonrenew a limited number of eligible person insureds; the former would appear to negate that authority by prohibiting the insurer from nonrenewing eligible persons, or requiring the insurer to provide coverage if the insured re-applied. The proposed amendment codifies the Department's present practice by providing that an insured nonrenewed pursuant to N.J.S.A. 17:29C-7.1b and c may be declined coverage by the nonrenewing insurer for one policy period, but not more than one year.

This proposal also repeals N.J.A.C. 11:3-9.2 which was adopted in 1975. This rule states that a suspended or revoked driver shall not be considered an insured operator under the policy. It appears to be contrary to the terms of N.J.A.C. 11:3-35.5(d) which states in part that "eligibility points of other household members may additionally be used to rate" the policy in the household. Thus, an insurer may use its filed non-standard rates in the voluntary market when there is a suspended or revoked driver in the household who would ordinarily be insured under the policy. Since N.J.A.C. 11:3-9.2 is inconsistent with this rule, it must be repealed.

Social Impact

These proposed amendments and repeal may affect eligible drivers who reside in households with drivers who have had their licenses suspended or revoked. Present statutes permit insurers to cancel the automobile insurance of persons who reside with and are insured under a policy with a suspended or revoked driver. Other statutes require auto insurers to provide auto insurance to defined eligible persons. In certain circumstances, these conflicting authorities create uncertainty for both insurers and insureds.

The resolution set forth in these proposed amendments and repeal benefit the public and yet does not negatively impact on insurers. In situations where the suspended driver is shown to be operating a vehicle while suspended, the policy may be cancelled or nonrenewed and the otherwise eligible drivers insured in the PAIP.

While the PAIP will experience an increased number of risks which it will be required to insure, the Department anticipates that the total number insured by the PAIP will still be well below the maximum of 10 percent of the market as provided in N.J.S.A. 17:29D-1.

The proposed amendment provides a logical harmonization of the applicable statutes, which when read literally may produce an incongruous result.

Economic Impact

These amendments will impact insureds, insurers, the Department and the PAIP. Insurers will be required to expend the resources necessary to file and obtain approval from the Department for the necessary amendments to their policy forms and underwriting rules. This will involve only a minimal, one-

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time expense. The implementation of these amendments may be conducted with existing staff.

Most eligible person insureds will not experience any additional costs as a result of these rules. However, those eligible persons insured on the same policy as a suspended driver who either has been convicted of operating a vehicle while suspended, or otherwise shown to have been operating a vehicle, will be required to obtain auto insurance through the PAIP. Any premium increase will, however, be netted through the system, that is, any increase to some insureds will be offset over time by a corresponding decrease to other eligible person insureds. The Department believes this change is appropriate for the reasons set forth in the summary.

Any additional costs which will result in reviewing for approval insurers' underwriting guidelines will be absorbed by the Department's existing staff.

The PAIP will incur the additional costs necessary to provide coverage initially for the additional risks which it will insure.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because private passenger automobile insurance as addressed in the proposed amendments is not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

Few if any insurers affected by these proposed amendments are likely to be "small businesses" as defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-17. These amendments which permit insurers to put into effect new underwriting rules, apply to all insurers regardless of size. While the implementation of these amendments may generate some expenses for insurers, insurers will, nevertheless, benefit from their implementation.

To the extent that these amendments apply to small businesses, they may impose a slightly greater impact on those businesses in that a proportionately larger staff and greater financial resources may be devoted to these amendments by a smaller insurer than by a larger insurer.

Costs incurred as a result of these proposed rules are outweighed by the importance of uniform, consistent practices in providing auto insurance. The need to provide uniformity must be achieved regardless of the size of insurer involved.

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

[11:3-9.2 Private passenger automobile rating class; revoked or suspended operator

Within the context of any private passenger automobile classification rating system, an individual whose automobile operator's license is under revocation or suspension shall not be considered an operator of the vehicle. In the event such revocation or suspension terminates and the license is restored, premium adjustments reflecting such operator's rating criteria for the curernt policy period may be made on a *pro rata* basis.]

11:3-34.4 Eigible person qualifications

(a) An "eligible person" is a person who is an owner or registrant of an automobile registered and principally garaged in this State or who is resident and holds a valid New Jersey driver's license to operate an automobile, but does not include any person:

1.-6. (No change.)

7. Who fails to obtain or maintain membership or qualification for membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues or charges, if any, or other conditions for membership or qualifications for membership are applied uniformly throughout this State, are not expressed as a percentage of the insurance premium, and do not vary with respect to the rating classification of the member or potential member except for the purpose of offering a membership fee to family units. Membership fees, if applicable, may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees; [or]

8. Whose driving record for the three year period immediately preceding the application for or renewal of a policy of automobile insurance has an accumulation of nine or more automobile insurance eligibility points as determined in N.J.A.C. 11:3-34.5[.]**; or**

9. Who is a named insured or who is insured under the same policy as a person whose driver's license is suspended or revoked and either:

i. The suspended or revoked driver has been convicted of a violation of N.J.S.A. 39:6B-2 within the previous three years; or

ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during the period of suspension.

(b) (No change.)

11:3-35.4 Underwriting rules for eligible persons.

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

(e) Insurers may file for approval underwriting rules by which it cancels coverage during the policy term under a policy insuring an eligible person pursuant to N.J.S.A. 17:29C-7(A)(b) when the driver's license or motor vehicle registration of another named insured or person insured under the policy who either resides in the same household or customarily operates an automobile insured under the policy has been suspended or revoked. The Department may approve such underwriting rules if they include the following provisions:

1. The underwriting rules provide for the cancellation of the policy when the driver's license or motor vehicle registration is suspended or revoked for one or more of the following reasons:

i. Conviction of operating a motor vehicle under the influence of alcohol or drugs (N.J.S.A. 39:4-50);

ii. Conviction of refusal to submit to a chemical test (N.J.S.A. 39:4-50.4);

iii. Conviction of vehicular homicide (N.J.S.A. 2C:11-2);

iv. Conviction of operating a motor vehicle while driving privilege is suspended (N.J.S.A. 39:3-40);

v. Conviction of operating a motor vehicle without liability insurance (N.J.S.A. 39:6C-2);

vi. Conviction of misrepresentation of insurance coverage (N.J.S.A. 39:6A-15);

vii. Accumulation of motor vehicle penalty points pursuant to N.J.S.A. 39:5-30.3); or

viii. By a court upon conviction of one of the following motor vehicle violations: racing on a highway (N.J.S.A. 39:5C-1); failure to pass to right of vehicle proceeding in opposite direction (N.J.S.A. 39:4-84); tailgating (N.J.S.A. 39:4-89); reckless driving (N.J.S.A. 39:4-96); exceeding a speed limit by 30 MPH or more (N.J.S.A. 39:4-99); improperly passing a school bus (N.J.S.A. 39:4-128.1); or leaving the scene of an accident in which personal injury occurred (N.J.S.A. 39:4-129).

2. The underwriting rules provide for the cancellation of the policy when:

i. A household member is convicted of a violation of N.J.S.A. 39:6B-2 during the policy term; or

ii. Other evidence exists indicating that the suspended or revoked driver has been operating a vehicle during a peroid of suspension as outlined in 1 above.

3. The underwriting rules provide that coverage for eligible persons shall not be cancelled when the driver's license or motor vehicle registration of another named insured or any other operator insured under the policy is suspended or revoked for any reason other than those set forth in (e)1 above.

(f) Insurers may file for approval underwriting rules by which it declines coverage for one policy period not to exceed one year to eligible persons who have been nonrenewed pursuant to N.J.S.A. 17:29C-7.1b and c and N.J.A.C. 11:3-8.5(a).

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LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Division of Alcoholic Beverage Control Rules

Proposed Readoption with Amendments: N.J.A.C. 13:2

Proposed New Rules: N.J.A.C. 13:2-34, 37, and 41

Proposed Repeal: N.J.A.C. 13:2-9, 11, 28, 32 and 13:2 Appendix

Authorized By: John G. Holl, Director, Division of Alcoholic Beverage Control

Authority: N.J.S.A. 33:1-1 et seq.

Proposal Number: PRN 1995-350.

Submit comments by July 5, 1995 to:
John G. Holl, Director
Division of Alcoholic Beverage Control
140 East Front Street
CN 087
Trenton, New Jersey 08625-0087

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:2, which sets forth the rules of the Division of Alcoholic Beverage Control, is scheduled to expire on July 24, 1995. The proposed readoption, with amendments, repeals and new rules will continue the standards required by law for the regulation of the alcoholic beverage industry by the Division of Alcoholic Beverage Control.

The rules were reviewed and analyzed by the Division staff and were found to be necessary, reasonable and proper for the purposes for which they were originally promulgated.

In this Summary, and in the impact statements, the Executive Order No. 27 Analysis and the Regulatory Flexibility Analysis which follow, each subchapter is addressed separately.

Subchapter 1: The objective of this subchapter is to identify and establish the filing and advertisement requirements for State license applicants. The subchapter establishes a structured and uniform system in accordance with pertinent statutory provisions. This subchapter has been amended to reflect a change in language, substituting the proposed verb "prescribed" for the current verb "promulgated" as well as other changes in existing language for purposes of style and clarification. Other amendments are discussed in the specific sections referred to hereafter.

The subchapter establishes a framework for the issuance of State licenses and the following represents a summary of the specific sections and the proposed amendments:

N.J.A.C. 13:2-1.1 advises license applicants that applications for a license must be filed on forms prescribed by the Director of the Division of Alcoholic Beverage Control.

N.J.A.C. 13:2-1.2 sets forth the information required in the Notice of Application for a license held by a corporation or other entity or for instances when the building which will be the licensed premises has not yet been constructed. This section has been amended to set forth the present address of the Division.

N.J.A.C. 13:2-1.3 identifies the form for the application advertisement which includes information about the applicant and mailing address where written objections should be sent. This section has been amended to set forth the present address of the Division. Additionally an amendment is proposed to require that an applicant for a State license provide the Division with an affidavit stating that a copy of the notice has been served personally or by ordinary mail on the clerk of the municipality in which the applicant intends to conduct retail sales.

N.J.A.C. 13:2-1.4 mandates that applicants for a State license provide proof of publication of the notice of application after the second publication has occurred. The filed proof must have a copy of the dated advertisements attached.

N.J.A.C. 13:2-1.5 sets forth that applicants for renewal of annual State licenses are not required to advertise notice of application, since the Director will have such renewal notices advertised, Statewide.

N.J.A.C. 13:2-1.6 provides that the Director shall provide for a hearing if timely signed, written objections are received with respect to the issuance, transfer or renewal of a State license.

N.J.A.C. 13:2-1.7 provides that any changes in facts contained in an existing filed application for a State issued license requires the licensee to file an amendment to the license application within 10 days of the occurrence of the change.

N.J.A.C. 13:2-1.8 sets forth the requirements and form to be used to advertise a change in corporate stock holders of a liquor license.

N.J.A.C. 13:2-1.9 advises that the rules in this chapter are of general applicability and may be relaxed by the Director upon a written request by a licensee. The request will be granted only if the applicant exhibits to the Director, in writing that an undue hardship, economic or otherwise, requires the waiver; that the issuance of the waiver will not unduly burden any affected party; and, that waiver is inconsistent with the underlying purposes of Title 33 and the implementing regulations. This section is proposed for amendment to set forth the obligation of a licensee, permittee or applicant to submit for fingerprinting and financial disclosure when so required by the Director or local issuing authority. This section is also proposed for amendment to address potential problems from proposed changes to other regulatory sections which will now permit the Division to accept uncertified checks for payment of fees. As a result of those changes, it is proposed herein that any checks submitted which are returned unpaid to the Director or other issuing authority shall subject the licensee, permittee or applicant to disciplinary action or denial of current or future applications.

Subchapter 2: The objective of this subchapter, which addresses the filing and advertisement of applications for municipal licenses, is to establish a uniform method to be used by all municipalities to comply with pertinent law. This subchapter is proposed for readoption with amendments.

N.J.A.C. 13:2-2.1 advises license applicants that a specific form must be filed with the issuing authority and appropriate fees must be paid. This section is amended to reflect a statutorily mandated change in State filing fees from $50.00 to $100.00. This section also has been amended to reflect a change in language, substituting the proposed verb "prescribed" for the current verb "promulgated."

N.J.A.C. 13:2-2.2 sets forth the form for the notice of application.

N.J.A.C. 13:2-2.3 defines the issuing authority so applicants and objectors know who will be making the decision regarding the license and where to object. A change in existing language is proposed to clarify that the provisions of this section do not apply to club licenses.

N.J.A.C. 13:2-2.4 provides instruction so that an applicant strictly follows statutory language in identifying the kind of license in the application.

N.J.A.C. 13:2-2.5 notifies applicants where and how to publish their notices of application.

N.J.A.C. 13:2-2.6 reflects that the publication and notice requirements for the annual renewal of municipal licenses, other than seasonal licenses, shall be performed by the Director.

N.J.A.C. 13:2-2.7 ensures that persons filing a written objection to a license application are given an opportunity to have a hearing on the objection.

N.J.A.C. 13:2-2.8 sets forth the timetable for when a hearing should be held.

N.J.A.C. 13:2-2.9 reflects that no formal hearing is required if no written objections are received unless the issuing authority determines that a hearing is appropriate. This section also requires that the issuing authority make specific findings and include in any resolution approving an application that (a) the application is complete, (b) the applicant is qualified for licensure under existing law and regulations, and (c) the sources of funds to purchase the license and business have been disclosed and reviewed.

N.J.A.C. 13:2-2.10 sets forth the time limits when a decision must be made by the issuing authority.

N.J.A.C. 13:2-2.11 confirms the provisions of N.J.S.A. 33:1-25 concerning refunds of a portion of license fees when an application is denied and confirms non-refundability of the State filing fee.

N.J.A.C. 13:2-2.12 confirms the provisions of N.J.S.A. 33:1-16 concerning pro-rating of annual license fees from the date of issuance. This section clarifies that the pro-rating provisions do not apply to licenses issued pursuant to N.J.S.A. 33:1-12.18.

N.J.A.C. 13:2-2.13 allows a municipality, if it imposes a special condition that the transfer shall not be effective until five business days have elapsed, to adopt a resolution approving the transfer after the second publication of the notice of application.

N.J.A.C. 13:2-2.14 confirms provisions contained in N.J.S.A. 33:1-34 requiring notification within 10 days after the occurrence of any change in the facts set forth in the last filed license application. This section has been

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amended to reflect a change in language, substituting the proposed verb "prescribed" for the current verb "promulgated."

N.J.A.C. 13:2-2.15 sets forth the requirement and form for publication for a notice of change in stockholders of a corporate licensee.

N.J.A.C. 13:2-2.16 provides that notice of corporate stockholding changes shall be published once in a newspaper printed in the English language in the municipality or county in which the licensed premises is located with proof of publication provided to the issuing authority within 10 days of publication.

Subchapter 3: The intent and purpose of this subchapter is to establish structured, uniform procedures for recordkeeping regarding the issuance of municipal retail licenses. It also provides for the special review by the Director of all licensing actions in Atlantic City. N.J.A.C. 13:2-3.3 is proposed for repeal since the Division now provides issuing authorities with license certificates which contain the State-assigned 12-digit number. As a result, this section is no longer required.

N.J.A.C. 13:2-3.1 provides that the Director shall establish the form and content of all license certificates and make certificates for licenses available to the municipal issuing authorities.

N.J.A.C. 13:2-3.2 requires that municipalities maintain full and complete records concerning all retail licenses located in their communities.

N.J.A.C. 13:2-3.3 establishes a 12-digit State assigned license number that identifies the license's county and municipality, type of license and unique number for the license. For the reasons noted above, this section is proposed for repeal. The repeal will not change the current 12 digit license numbering system.

N.J.A.C. 13:2-3.4 establishes a signature requirement on each license certificate of either the name of the municipality or its municipal board, whichever is the issuing authority. It also requires that the certificate bear the signature of the designated municipal officer or agent of the governing body or board.

N.J.A.C. 13:2-3.5 requires that no license certificate be signed, issued or delivered by any person unless and until so directed by a resolution of the issuing authority. It also provides that the effective date of the issuance or transfer of any license is the date of adoption of the resolution of action by the municipal issuing authority, unless otherwise specified.

N.J.A.C. 13:2-3.6 sets forth the requirement for each municipal authority to notify the Division of license activity through a daily certification which shall include any license application filings or amendments, any fees to be remitted to the Director, and any resolutions adopted.

N.J.A.C. 13:2-3.7 sets forth Division oversight and investigative responsibility in all Atlantic City matters involving the issuance, renewal or transfer of any retail license.

Subchapter 4: The responsibility to issue, renew and transfer most retail liquor licenses is vested by law in the municipal governing body of the community where that license is located. For purposes of the Alcoholic Beverage Law, the governing body or municipal board is called the "municipal issuing authority." The principal exception to municipal license actions is when a member of the municipal issuing authority owns an interest in a retail license and the issuing authority is disqualified from acting on that license. This subchapter deals with this exception and is derived from the legislative provisions of N.J.S.A. 33:1-20. This statutory provision requires that a municipal issuing authority cannot issue any license to any member of the issuing authority who has an interest, direct or indirect, in a retail license. The application must be submitted to the Director of the Division of Alcoholic Beverage Control.

The provisions of this subchapter are proposed for readoption with amendments to reflect the present mailing address of the Division. The Division also proposes to no longer require a certified check or money order in lieu of cash as payment of a required fee. Any fee required to be submitted to the Division will now be payable in cash, money order or regular check. An amendment is also proposed to recognize the situation where a municipal issuing authority is de facto prohibited from issuing a license because it is unable to reach a quorum due to a determined conflict of interest resulting from other than a member's ownership interest in a retail license. Finally amendments are proposed to clarify that renewals of conflict licenses must also be handled by the Division.

N.J.A.C. 13:2-4.1 and 4.2 deal with a member of an issuing authority holding an interest in a license and the requirement that the Division receive the application, and act upon the issuance or transfer of such license. Application must be made to the Director in circumstances where there is a conflict caused by a member's ownership interest in the license or because of the municipal authority cannot reach a quorum to act on an application. Existing language in N.J.A.C. 13:2-4.1 is also clarified, to note that this section does not apply to club licenses, but does apply to renewals.

N.J.A.C. 13:2-4.3, 4.4 and 4.5 set forth the provisions for issuance, renewal and transfer of such licenses. They are amended to no longer require a certified check as payment for a fee.

N.J.A.C. 13:2-4.6 requires the issuing authority, in conflict situations, to submit a resolution that it does not object to the application and knows of no local ordinance or other reason which would prevent an application from being approved. It is amended to clarify that this section also applies to renewals.

N.J.A.C. 13:2-4.7 contains the procedure for required advertising of the notice of such applications.

N.J.A.C. 13:2-4.8 provides for refunding 90 percent of a license fee, other than the State fee, upon a denial of an application. It is amended to also address disposition of fees where a renewal application is denied.

N.J.A.C. 13:2-4.9 provides for a proration of license fees for new licenses, except that same does not occur with the issuance of a new license under N.J.S.A. 33:1-12.18.

N.J.A.C. 13:2-4.10 is amended to reflect the present mailing address of the Division.

N.J.A.C. 13:2-4.11 remains in a reserved status.

Subchapter 5: The proposed readoption with amendments of this subchapter will continue the requirements and set forth the procedures for the issuance of special permits by the Director. These permits authorize alcoholic beverage activity consistent with but not otherwise provided for by the Alcoholic Beverage Law. This subchapter is proposed for amendment to allow for the payment of permit fees by regular check rather than in cash, certified check or money order, as is required by current regulations. This subchapter is also proposed for amendment to reflect a change in language, substituting the proposed verb "prescribed" for the current verb "promulgated" as well as to update the Division's current address and to address other changes required by recent legislative enactments. Other amendments are discussed in the specific sections referred to hereafter.

N.J.A.C. 13:2-5.1 allows organizations operating solely for civic, religious, educational, charitable, fraternal, social or recreational purposes, and not for private gain, to apply for a social affair permit. The permit is essentially a one day retail license issued to the aforesaid organizations. Applicants are allowed to receive permits for more than one event per month but the total permits that may be issued to any one applicant is 12 for any 12 month calendar period. Applicants can obtain social affairs permits after they establish their eligibility by complying with the submission requirements, paying the appropriate fee and filing an inventory report if required by the Director. This section is proposed for amendment to recognize the Director's discretion to request an inventory report in contrast to the current requirement mandating filing of such reports. This section is proposed for amendment to comply with an amendment to the law providing for the payment of a $50.00 permit fee (rather than a $75.00 fee) for veterans organizations. This section has also been amended to recognize that permit applications may be signed either by the municipal chief of police or the chief's authorized designee.

N.J.A.C. 13:2-5.2 specifies the requirements necessary to obtain a special concessionaire permit. N.J.S.A. 33:1-42 prohibits the sale of alcoholic beverages in facilities which are located on public property or in public buildings unless permitted by the Director in accordance with rules and regulations. This regulatory section authorizes such sales, but only when conducted pursuant to a State issued permit. This permit can also authorize the sale of alcoholic beverages in original containers for off-premises consumption when the applicant receives the consent of the governmental agency and establishes good cause for such sale to the satisfaction of the Director. This section is proposed for amendment for purposes of clarifying language and to delete, as duplicative, a provision authorizing the relaxation of its rules. A general relaxation provision has been proposed for readoption in subchapter 1 upon the Director's finding of good cause.

N.J.A.C. 13:2-5.3 provides for other special permits which the Director may issue to authorize the sale of alcoholic beverages by a receiver, trustee, executor, or other court appointed person, or judgment creditors or secured parties, where the sale is authorized in accordance with law or a court order. The fee for this permit is amended to comport with recent statutory changes authorizing a fee not less than $5.00 nor more than $1,000. The permit is issued to the seller for good cause shown and allows the temporary storage and transportation of alcoholic beverages pending sale, as well as the sale to and transportation by the purchaser. Within 10 days of the sale the permittee must file an inventory report with the Director.

N.J.A.C. 13:2-5.4 provides for the issuance of temporary permits to deal with circumstances where the sale of alcoholic beverage activity is not otherwise encompassed by a license. The statutory authority for the issuance of these permits is noted (N.J.S.A. 33:1-74). The application is made on forms

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prescribed by the Director. The Director may also impose special conditions on any such permits. The fee has been amended from a current maximum of $500.00 to $1,000 in accordance with recent statutory changes.

Subchapter 6: This subchapter establishes a framework for the extension of a license to a fiduciary in cases of death, bankruptcy, receivership, incompetency or for any other reasons in which the operation of the licensed business devolves by operation of law upon another person. This subchapter is proposed for readoption without change.

N.J.A.C. 13:2-6.1 identifies when an extension of license is required, how to petition for the extension and when to amend the current license application to reflect the change in status.

N.J.A.C. 13:2-6.2 notes the circumstances when a special permit is required from the Division to continue operation of a business, while the application is pending, to extend the license to a person to be appointed as a fiduciary.

N.J.A.C. 13:2-6.3 provides for the proofs which are required to be submitted along with the petition.

N.J.A.C. 13:2-6.4 contains the form of the endorsement that will be placed on a license certificate signifying the extension to a person other than the named licensee.

Subchapter 7: The basic procedures, fees and requirements to transfer liquor license are set forth in N.J.S.A. 33:1-16, which incorporates by reference certain provisions of N.J.S.A. 33:1-25. The purpose and intent of the readoption with amendments of this subchapter is to continue the uniform and comprehensive procedure for license transfer as required by the above statutes. Provisions in this subchapter are proposed for amendment to reflect a change in language, substituting the proposed verb "prescribed" for the current verb "promulgated" as well as to make other language changes for merely clarification and styling purposes. Other amendments are discussed in the specific sections referred to hereafter.

N.J.A.C. 13:2-7.1 notes that a license can be transferred and that such transfer can be either person-to-person or place-to-place.

N.J.A.C. 13:2-7.2 provides that an application for transfer of a license to other premises must be filed with the Director or other issuing authority. If the proposed transfer is to a building not yet constructed, the plans of the proposed building shall accompany the application. This section has been amended to require the licensee to file a place-to-place transfer application when it is proposed that the licensed premises will be expanded or there is a voluntary reduction of the premises or de-licensure of all or a portion of the premises. This amendment codifies the Division's interpretation of the pertinent provisions of N.J.S.A. 33:1-26 which require an application for a place-to-place transfer when a license is transferred to a different place of business.

N.J.A.C. 13:2-7.3 provides that an application for transfer of a license to another person or other persons and other premises must be filed with the Director or other issuing authority.

N.J.A.C. 13:2-7.4 sets forth the form of notice that must be published to advise the public that a transfer is sought. The information paragraph has been amended to provide notice in the case of a proposed expansion or contraction of the premises.

N.J.A.C. 13:2-7.5, 7.6 and 7.7 identify the provisions concerning objections to applications and that hearings must be held on same. An amendment to N.J.A.C. 13:2-7.7 notes that the issuing authority's investigation should include fingerprinting, a criminal background check and review of an applicant's financial documentation as part of a thorough investigation. Another amendment requires the issuing authority to certify that the written consent to transfer the license has been executed by the transferee.

N.J.A.C. 13:2-7.8, 7.9 and 7.10 provides that transfer applications must be filed on application forms prescribed by the Director, for all place-to-place transfers, person-to-person transfers and combined transfers of both person and place.

N.J.A.C. 13:2-7.11 and 7.12 have been amended to increase the fees for the transfer to other premises, another person or a combined transfer from $50.00 to $100.00 for each transfer application. This fee increase is a result of recent amendments to law.

N.J.A.C. 13:2-7.13 allows a municipality to adopt a resolution approving the transfer after the second publication of notice of application, as long as it imposes a special condition that the transfer shall not be effective until five business days have elapsed.

N.J.A.C. 13:2-7.14 identifies the endorsement that must be made on the license certificate to reflect the approved transfer.

N.J.A.C. 13:2-7.15 notes the requirements for local issuing authorities to promptly certify license information to the Director.

Subchapter 8: The provisions of N.J.S.A. 33:1-12 establish a club license which entitles the holder, subject to rules and regulations, to sell any alcoholic beverage, but only for immediate consumption on the licensed premises, to bona fide club members and their bona fide guests. The law further sets forth the fee for the license, the option of the local governing body not to issue any club license and defines the type of not for profit corporations, associations and organizations which can qualify for a club license. The law also provides that the Director shall establish the conditions under which such club licenses must operate. Subchapter 8 establishes such rules and conditions.

This subchapter is proposed for readoption with amendments as well as for repeal of N.J.A.C. 13:2-8.12. Provisions in this subchapter are proposed for amendment to reflect a change in language, substituting the proposed verb "prescribed" for the current verb "promulgated" as well as to make other language changes for merely clarification and styling purposes. Other amendments are discussed in the specific sections referred to hereafter.

N.J.A.C. 13:2-8.1 through 8.5 define club, club member and guests and sets forth eligibility requirements and exceptions for a club or proposed club licensed premises. Other than an amendment in N.J.A.C. 13:2-8.1 clarifying that a club must not only consist of 60 or more persons who are of legal drinking age but also be controlled by the club members, these sections are proposed for readoption without change.

N.J.A.C. 13:2-8.6 incorporates the basic requirements that club officers and governing body members must not be disqualified from having an interest in a retail license. Amendments are proposed to specifically require that the renewal of a club license shall not be approved unless the issuing authority makes certain findings and reduces those findings to a resolution, as is now required for initial applications. It is also amended to reflect the deletion of N.J.A.C. 13:2-8.12, which is being repealed and the addition of N.J.A.C. 13:2-8.7, which contains records which the club must be maintained and must be reviewed by the issuing authority at time of renewal. An additional amendment is proposed to mandate that the officers and directors of a club certify that they have read and understand their legal responsibilities pertaining to their operation of a club license.

N.J.A.C. 13:2-8.7 requires a list containing the names and addresses of all club members and the club charter to be submitted with the initial and renewal applications.

N.J.A.C. 13:2-8.8, 8.9 and 8.10 reiterate statutory provisions governing to which persons alcoholic beverages can be sold, prohibiting sales for off-premises consumption and prohibiting sales during hours not authorized by municipal regulations or referendum. An exception is recognized for events conducted on the club's licensed premises pursuant to a social affair permit issued by the Division. Where events are held pursuant to a social affair permit, the Division requires the club to keep a record of pertinent information concerning all such events.

N.J.A.C. 13:2-8.11 addresses the limited nature of the club license. A club licensee is prohibited from selling, serving or delivering alcoholic beverages or suffering such activity, to any person attending an event conducted by a permittee other than the club licensee, unless such persons are bona fide members or guests.

N.J.A.C. 13:2-8.12 is proposed for repeal. It encompasses regulatory provisions applicable to all license holders regarding the maintenance of true books of account, and which provide for the inspection of records by authorized persons. (N.J.A.C. 13:2-23.32 now provides that all licensees must comply with these requirements.)

N.J.A.C. 13:2-8.13 prohibits a club licensee from advertising or allowing the advertising, to non-club members, of the availability of alcoholic beverages at the club, unless it concerns an event held pursuant to a lawfully issued special permit. Social affair permits authorize the sale of alcoholic beverage at the club's licensed premises to members of the public. Advertisements of such affairs must contain the social affair permit number.

N.J.A.C. 13:2-8.14 sets forth that a club licensee is subject to disciplinary proceedings for violation of all relevant statutory and regulatory provisions applicable to retail licenses.

Subchapter 9: This subchapter is proposed for repeal. The sale of warehouse receipts is prohibited by law, except under and pursuant to the provisions of a warehouse receipts license issued by the Director. This provision is currently set forth in N.J.S.A. 33:1-72. The intent of Title 33, dealing with the control and regulation of alcoholic beverages, is to protect the public and be remedial of any abuses inherent in the alcoholic beverage industry. In order to do so, the authority of the Director of the Division of Alcoholic Beverage Control is liberally construed to address any such problems. Accordingly, the repeal of this subchapter will not result in restricting the Director from taking appropriate action in matters involving warehouse receipts and the sale of same without a permit. No new warehouse receipts licenses have been issued in the past five years. Repeal of this subchapter is warranted as its provisions are largely unnecessary.

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Subchapter 10: This subchapter is the basic regulatory provision concerning plenary wineries. It currently sets forth rules governing the application process for plenary winery and wine blending licenses. It also contains rules regarding retail privileges and restrictions of plenary winery licenses, including having two additional retail sales outlets besides the retail sales outlet authorized on their winery premises. Additionally, this subchapter describes how five plenary and/or farm wineries can join together to establish jointly controlled and operated retail sales outlets, one to a county, which are in addition to their own sales outlets. Finally, it sets forth the manner in which wine products of plenary wineries may be delivered by a licensed parcel delivery service.

Subchapter 10 is proposed for readoption and amendment in order to integrate provisions from subchapter 11 (which currently deals with farm wineries) since the application process and restrictions on both are very similar. Additionally, revisions are proposed in order to incorporate changes required by recent statutory amendments. The regulatory amendments are being proposed in order to consolidate both subchapters and provide a concise regulatory scheme which will guide plenary and farm winery licensees in all aspects of their operation.

Besides the consolidation of applicable sections from the two subchapters into subchapter 10, provisions in this subchapter are proposed for amendment to reflect a change in language; for example, it is proposed to substitute the verb "prescribed" for the current verb "promulgated" as well as to make other language changes for merely clarification and styling purposes. An additional proposed change is to require plenary and farm wineries who apply for additional retail sales outlets which will be located within premises where other mercantile business are currently operating (such as restaurants, grocery stores, etc.) to identify how the licensee proposes to control consumption and how the licensed premises will be demarcated from the unlicensed premises. This subchapter also contains amendments to reflect recent statutory changes, including expanding each winery's ability to now have up to five (rather than two) additional retail sales outlets. Additionally the law now provides for a minimum of two (rather than five) winery licensees to join together to establish one jointly controlled sales outlet in each county. These jointly controlled retail outlets can sell any wine produced by a New Jersey farm or plenary winery, and are not limited to selling only the licensees' own wines. Additionally, all retail sales outlets now are authorized to sell wines for consumption on as well as off the licensed premises, as provided by recent legislative amendment.

Amendments are also proposed to delete surplus language which merely repeats provisions already contained in applicable law. (N.J.S.A. 33:1-10.2a and 10.2b.) For the same reason, the provisions dealing with the delivery of wine products by licensed parcel delivery services is proposed for deletion. In its place is advice that plenary and farm winery licensees who want to use such delivery services must comply with the provisions of N.J.S.A. 33:1-28.1 through 28.4.

Subchapter 11: This subchapter is proposed for repeal. The Division has determined to incorporate all pertinent rules regarding farm winery licenses within subchapter 10. Subchapter 10 currently sets forth rules governing plenary winery and wine blending licenses as well as the retail privileges of the license and the manner in which the wine product is delivered by a parcel delivery service. Subchapter 10 is proposed for readoption with amendments that will include all pertinent rules regarding farm wineries now contained in subchapter 11. The purpose of the proposed repeal is to consolidate both subchapters into one subchapter and to thereby provide a concise regulatory scheme which will guide farm and plenary winery licensees in all aspects of their operation.

Subchapter 12: The readoption of this subchapter will continue the authority provided to the Director under N.J.S.A. 33:1-75, to issue special permits for the manufacture of wine for personal consumption with a limit of not more than 200 gallons per year. Amendment of this subchapter is proposed to include the home manufacture of malt alcoholic beverages, as well as to reflect the ability to manufacture such beverages for "household" as well as personal consumption and also "use," consistent with recent legislative changes. Additionally, the Division proposes to permit the manufacture of these alcoholic beverages by a permittee on non-commercial premises, which premises are thereafter defined and restrictions imposed thereupon. Provisions in this subchapter are proposed for amendment to reflect language changes for clarification and styling purposes.

N.J.A.C. 13:2-12.1 confirms the statutory provisions regarding home manufacture of wine and reflects recent legislative amendments allowing the home brewing of malt alcoholic beverages. The permit fee is increased from $3.00 to $10.00.

N.J.A.C. 13:2-12.2 is proposed for repeal in order to allow the holder of an alcoholic beverage license to be eligible for a home brewing permit. As noted below, current licensees will only be permitted to manufacture limited quantities for their own personal use, not for resale, and not on their licensed premises.

N.J.A.C. 13:2-12.3 confirms that a permit will not be issued to a premises that is already licensed for the retailing, wholesaling, or manufacturing of alcoholic beverages. Amendments to this section set forth the definition of a non-commercial premises and the procedures and restrictions that an owner of the non-commercial premises must follow in order to offer space, equipment, ingredients, bottling supplies and expertise to permittees in the production of their malt alcoholic beverages or wines.

N.J.A.C. 13:2-12.4 sets forth that no permit shall be issued to any person under the legal age.

N.J.A.C. 13:2-12.5 provides that no permit shall be issued to a person convicted of an offense involving unlawful alcoholic beverage activity unless the Director issues a waiver of this prohibition.

N.J.A.C. 13:2-12.6 clarifies that no more than one malt alcoholic beverage and one wine permit shall be issued to any individual during any calendar year.

N.J.A.C. 13:2-12.7 provides that a permit is not transferable.

N.J.A.C. 13:2-12.8 provides for the revocation of the permit upon violation of any of its provisions.

Subchapter 13: This subchapter has the basic objective of establishing a uniform questionnaire which must be completed and kept on the licensed premises of all State issued licensees. The State licensee must require all appropriate individuals to disclose pertinent information in order to determine whether employees have criminal convictions or other disqualifying characteristics. This subchapter is proposed for readoption with amendment, along with deletion of N.J.A.C. 13:2-13.2(b)4. Provisions in this subchapter are proposed for amendment to reflect a change in language, substituting the proposed verb "prescribed" for the current verb "promulgated" as well as to make other language changes for merely clarification and styling purposes. Other amendments are discussed in the specific sections referred to hereafter.

N.J.A.C. 13:2-13.1 mandates that the holder of a State issued license and every person who is an officer, director or holder of more than one percent of the stock of any such licensed corporation, execute a questionnaire on a form prescribed by the Director.

N.J.A.C. 13:2-13.2 establishes the same requirement for persons who are employed by or connected with the alcoholic beverage business of a licensee which holds a State issued license. There are four categories which are exempted from the questionnaire requirement because their employment positions or interests do not impact upon the operation of the alcoholic beverage license. The exemption for non-resident bankers and other creditors as set forth in N.J.A.C. 13:2-13.2(b)4 is proposed for repeal since under modern banking practices such persons could have substantial control over licensees and it would be inappropriate to continue their exempt status.

N.J.A.C. 13:2-13.3 provides that a passport type color photograph shall be attached to the questionnaire.

N.J.A.C. 13:2-13.4 mandates that the questionnaires must be maintained upon the licensed premises and be made available for inspection by duly authorized persons.

Subchapter 14: This subchapter, proposed for readoption with clarifying amendments, regulates the issuance of permits to persons who are disqualified from working on a licensed premises, under the provisions of N.J.S.A. 33:1-26, either by being under the required age or by reason of a conviction of a crime of moral turpitude. Provisions in this subchapter are proposed for amendment to reflect language changes for clarification and styling purposes. Other amendments are discussed in the specific sections referred to hereafter.

The rules in the first part of the subchapter (N.J.A.C. 13:2-14.1, 14.2, 14.3 and 14.4) set forth provisions by which a person under 18 years of age may obtain a permit to work on a licensed premises when employed in various positions other than selling or manufacturing alcoholic beverages, as well as when employed in temporary or seasonal employment. N.J.A.C. 13:2-14.2(a) also recognizes that licenses operated in conjunction with a bona fide hotel or public restaurant are not required to have minors (who do not sell, serve or solicit the sale of alcoholic beverages) obtain permits, by the exception provided in N.J.S.A. 33:1-26.

N.J.A.C. 13:2-14.5, 14.6, 14.7, 14.8 and 14.9 concern the process by which a person who is criminally disqualified can obtain a Rehabilitation Employment Permit to work on a licensed premises. The permit process, the fees required and the type of permits are all addressed by these sections which also provide the standards under which a permit may be canceled or terminated. A clarifying amendment is proposed to note the standards under which a Temporary Work Letter may be issued by the Director. Specifically a

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Temporary Work Letter may be issued if the applicant demonstrates to the Director's satisfaction, behavior of a law-abiding nature and not having engaged or participated in any conduct detrimental to the integrity of the alcoholic beverage industry or the public interest. Another amendment clarifies that a licensee must terminate an employee upon the cancellation, suspension, revocation or expiration of a Rehabilitation Employment Permit or Temporary Work Letter. An amendment to N.J.A.C. 13:2-14.7(b)2 would allow a person having a Limited Employment Permit to also be permitted to sell, serve or deliver alcoholic beverages.

The final sections of the subchapter (N.J.A.C. 13:2-14.10 through 14.13) provide for the non-transferability of permits, the requirement to make amendments to a filed application upon changes in facts, conduct prohibited to a permittee, and the cancellation, suspension or revocation of any employment permits. No substantive amendments are proposed.

Subchapter 15: This subchapter implements N.J.S.A. 33:1-25 which, in pertinent part, prohibits the acquisition of an interest in a liquor license by a person who has been convicted of a crime involving moral turpitude. The proposed readoption with amendments codifies the procedures for the removal of the disqualification upon application to the Director in accordance with N.J.S.A. 33:1-31.2. Provisions in this subchapter are proposed for amendment to reflect language changes for clarification and styling purposes. Other amendments are discussed in the specific sections referred to hereafter.

N.J.A.C. 13:2-15.1 sets forth the time and factors that are considered by the Director in determining whether the statutory disqualification should be removed. At least five years must elapse from the date of conviction or release from incarceration, whichever is later, for an applicant to be eligible.

N.J.A.C. 13:2-15.2 sets forth the requirement of the petition for removal and includes the submission of a colored passport photograph as well as a set of fingerprints. This section is amended to reflect the statutory fee change from $25.00 to $100.00.

N.J.A.C. 13:2-15.3 provides for a hearing if there is a possibility that the application will be denied. Two character witness and the petitioner are required to testify at a hearing before the Director or the Office of Administrative Law.

N.J.A.C. 13:2-15.4 provides the standards the Director utilizes in determining whether or not to remove the disqualification. The standards include the passage of a minimum five year time period from the date of conviction or release from incarceration, whichever is later, the conduct of the petitioner since that period of time and whether the public interest will be adversely affected by the petitioner's association with the alcoholic beverage industry. This section is amended to codify the Director's decision in *In Re Gus Santorella,* Bulletin 2465, Item #5, ____ *N.J.A.R. 2d* (ABC) ____, which implemented the intent of N.J.S.A. 33:1-31.2. It was determined in that case that the Director has the authority to prohibit, in proper instances, the re-application of a person whose disqualification removal was denied, for an additional period of up to five years. As a result of this case, it is proposed that the Director may Order an applicant, who has been denied removal of a disqualification, to not re-apply for a period of up to five years from the date of final administrative or judicial action, whichever is later. The Director shall set the period of time during which a disqualified person may not re-apply and specify the reasons in the Order denying the disqualification removal.

Subchapter 16: This subchapter sets forth the rules setting forth the eligibility, issuance process and required conduct of persons holding solicitor's permits. The proposed readoption with substantive amendment confirms a long-standing legislative principle that all persons offering for sale or soliciting orders for alcoholic beverages must be holders of solicitor's permits. The substantive amendment is discussed in N.J.A.C. 13:2-16.6 referred to hereafter.

N.J.A.C. 13:2-16.1 provides that no individual may sell or solicit an order for the purchase of alcoholic beverages unless possessing a solicitor's permit. An individual licensee or members of a partnership are exempt from this provision if the license is held in the name of an individual or partnership, since they are authorized to sell under provisions of law.

N.J.A.C. 13:2-16.2 authorizes a holder of a solicitor's permit to offer and solicit the sale of alcoholic beverages on behalf of the holder's employer.

N.J.A.C. 13:2-16.3 establishes that the permit will only be issued to bona fide employees of Class A or Class B licensees with the exception that no permit will be issued to employees of a bonded warehouse bottling license. A bonded warehouse bottling license, although listed as a Class A license, is not eligible for the issuance of solicitor permits since its statutory privilege does not provide for the sale of alcoholic beverages to retail licensees or other wholesale licensees.

N.J.A.C. 13:2-16.4 prohibits the issuance of solicitor's permits to any person entrusted with the enforcement of laws concerning alcoholic beverages. It does provide, however, for the issuance of a permit to a member of a governing body but with the prohibition that such person can not solicit any order or sell any alcoholic beverages to licensees in the person's municipality.

N.J.A.C. 13:2-16.5 contains the fees for each type of solicitor's permit and notes that a separate fee must also be paid for each licensee designated in the permit.

N.J.A.C. 13:2-16.6 sets forth the requirements for the application for the permit, including required photographs and fingerprints. The rule requires a form, prescribed by the Director, to be completed with a passport type color photograph accompanying the application. The applicant must also submit to fingerprinting and pay any necessary fees for the processing of the fingerprints. This section is proposed for amendment, to require applicants for issuance or renewal of a solicitor's permit to attest that they have read and understand their responsibilities under applicable law and that they will not violate such law. The amendment provides that the Director shall prescribe the form of the affidavit and it shall require the applicant to specifically attest to the awareness of the restrictions of the Tied House Law (N.J.S.A. 33:1-43), the Retail Cooperative Purchase Regulation (N.J.A.C. 13:2-26) and the limitations placed upon sales activities by the Trade Member Discrimination, Marketing and Advertising Regulation (N.J.A.C. 13:2-24).

N.J.A.C. 13:2-16.7 identifies the term of the permit and specifically notes that the permit shall expire on May 31 following issuance.

N.J.A.C. 13:2-16.8 confirms that solicitor's permits are not transferable to employer or employee.

N.J.A.C. 13:2-16.9 requires a solicitor to notify the Division in writing of all changes in fact to the filed permit application within 10 days of a change.

N.J.A.C. 13:2-16.10 requires that the solicitor's employer must file a notice with the Director upon termination of any solicitor's employment for which a permit was issued and further requires that the permittee must surrender the permit within 10 days, for cancellation.

N.J.A.C. 13:2-16.11 provides certain restrictions on permittees. The restrictions include prohibition from engaging in any activity or sale not allowed by law as well as prohibiting engaging in promotions that are not contained in the employer's Marketing Manual or Current Price List for the period and time in which the solicitation occurs.

N.J.A.C. 13:2-16.12 prohibits the holder of a solicitor's permit from having any interest, direct or indirect, or being employed or connected in any business capacity with a retail licensee.

N.J.A.C. 13:2-16.13 confirms that a solicitor consents to a search without a search warrant, by authorized persons, of any vehicle owned or driven by the solicitor.

N.J.A.C. 13:2-16.14 prohibits a manufacturer or wholesaler from allowing anyone to solicit sales on their behalf unless the person holds a solicitor's permit.

N.J.A.C. 13:2-16.15 establishes that all contracts between employers and their solicitors must be in writing and must be maintained by the employer for a period of 3 years and shall be made available for inspection by persons authorized to enforce the Alcoholic Beverage Control Act.

N.J.A.C. 13:2-16.16 requires the filing of an annual compensation statement setting forth the monies paid by the employer to the solicitor. The filing date for the statement is May 31 and the rule sets forth that all compensation must be itemized and include, in addition to salary, commission and expenses, any prizes, awards or bonuses paid during the calendar year.

Subchapter 17: This subchapter is proposed for readoption and amendment. It sets forth the rules governing the filing of various appeals with the Director. The appeals to the Director are in accordance with pertinent statutory provisions of Title 33 and involve the following: issuance, renewal or extension of retail licenses, N.J.S.A. 33:1-22; the transfer of retail licenses, N.J.S.A. 33:1-26; disciplinary proceedings and the imposition of disciplinary sanctions against retail licensees, N.J.S.A. 33:1-31; the limitation on the number of retail licenses or hours of sale, N.J.S.A. 33:1-40; and the review and adjudication of other matters which may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages, N.J.S.A. 33:1-39. Provisions in this subchapter are proposed for amendment to reflect language changes for clarification and styling purposes, as well as to reflect fee changes required by legislative amendment.

The appeals noted herein can be filed by applicants for licenses, licensees, and any other person appealing from actions taken by a local issuing authority concerning retail liquor licenses. The proposed readoption is without substantive amendment.

N.J.A.C. 13:2-17.1 provides that an appeal is commenced by filing a notice and petition of appeal with the Director accompanied by a filing fee. The fee

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has been amended to reflect a change from $50.00 to $100.00 in accordance with law.

N.J.A.C. 13:2-17.2 notes the requirements of service of papers on all appropriate parties.

N.J.A.C. 13:2-17.3 confirms statutory provisions of a 30 day time limit for the filing of an appeal either from the date or notice of the issuance, extension or transfer action taken on a license, depending upon the status of the appellant.

N.J.A.C. 13:2-17.4 provides that respondents to an appeal must file an answer with the Director within 10 days of receipt of the notice and petition of appeal.

N.J.A.C. 13:2-17.5 sets forth the pertinent provisions of law requiring hearings on matters determined to be contested cases. The hearings may be held by the Director or referred to the Office of Administrative Law.

N.J.A.C. 13:2-17.6 sets forth the standards for the burden of proof applicable in all appeals which are heard as de novo hearings. The appellant has the burden of establishing that the action of the issuing authority was erroneous.

N.J.A.C. 13:2-17.7 provides for the issuance of subpoenas for hearings by either the Director or the Administrative Law Judge.

N.J.A.C. 13:2-17.8 confirms the provisions of N.J.S.A. 33:1-31 which provide that the filing of an appeal from a disciplinary sanction imposed by the local issuing authority automatically stays the sanction unless otherwise ordered by the Director. All other appeals do not result in the issuance of a stay unless otherwise ordered by the Director.

N.J.A.C. 13:2-17.9 codifies the provisions of N.J.S.A. 33:1-22 authorizing the Director to temporarily extend the privileges of the license which has been denied renewal and is pending appeal. The extension order expires at the end of the license term it was issued in by the Director, even if an appeal has not been adjudicated. A new appeal must be filed for the next license term.

N.J.A.C. 13:2-17.10 provides that any transfer, extension or renewal of a license involved in a pending appeal will be subject to the ultimate outcome of the appeal.

N.J.A.C. 13:2-17.11 acknowledges that the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern the conduct of the contested case.

Subchapter 18: This subchapter confirms and implements the statutory provisions of N.J.S.A. 33:1-93.6 through 93.10 and the administrative policy of the Division. The proposed readoption with amendments will continue the policy that no importer, blender, distiller, rectifier or winery can discriminate in the sale of any nationally advertised brand of alcoholic beverages, other than malt alcoholic beverages, to duly licensed New Jersey wholesalers authorized to sell the nationally advertised brand in New Jersey. The rules set forth a procedure to initiate a claim of discrimination and clarifies the interim and final enforcement powers of the Director. Provisions in this subchapter are proposed for amendment to reflect language changes for clarification and styling purposes.

N.J.A.C. 13:2-18.1 sets forth the legal basis for a claim for relief.

N.J.A.C. 13:2-18.2 and 18.3 provides guidance in the filing, serving and answering of petitions and is amended to note that a filing fee of $100.00 is required by law and must accompany the petition which must identify the subject matter and the brand registration number for each of the products involved in the proceedings.

N.J.A.C. 13:2-18.4 sets forth the interlocutory relief that petitioner may apply for and confirms the authority of the Director to grant such relief if a substantial question of law or fact has been raised and petitioner will probably suffer substantial and irreparable injury without the granting of the relief. Clarification is provided that ad interim relief can include an Order which requires, among other things, that the respondent sell designated product(s) to the petitioner upon terms as specified by the Director.

N.J.A.C. 13:2-18.5 mandates compliance with Director's order by licensees or non-licensees and provides for penalties if there is non-compliance.

N.J.A.C. 13:2-18.6, 18.7 and 18.8 identify the procedures regarding the Director's jurisdiction, the requirement for a public hearing of matters brought under this subchapter, as well as providing that the hearing shall be conducted consistent with the provisions of the Administrative Procedure Act.

Subchapter 19: The proposed readoption with amendment of this subchapter sets forth the provisions governing the administrative disciplinary proceedings instituted for violation of the Alcoholic Beverage Law and/or the rules of the Division. The proposed amendment implements an interpretation of provisions of law, as determined by the Director in a recent case.

N.J.A.C. 13:2-19.1 provides that a disciplinary proceeding will not be barred nor will a pending proceeding be terminated because of the expiration, transfer, surrender, renewal or extension of a license or permit.

N.J.A.C. 13:2-19.2 provides that a disciplinary proceeding can be instituted for violations occurring during a license term, prior to a transfer or extension of a license, or during a period when the license was held by a predecessor to the current licensee.

N.J.A.C. 13:2-19.3 reflects that a pending disciplinary proceeding shall continue to completion and that a suspension, cancellation or revocation will be effective without any further proceedings even if the license was transferred, extended or renewed during the disciplinary proceedings.

N.J.A.C. 13:2-19.4 provides that a licensed premises subject to a pending disciplinary hearing can be declared ineligible for licensure even though the license or permit is surrendered or another license was issued to another person for the same premises.

N.J.A.C. 13:2-19.5 mandates that when a license is suspended the suspension shall continue in full force and effect notwithstanding any transfer or extension of the license during the period of suspension.

N.J.A.C. 13:2-19.6 identifies the jurisdiction and hearing procedures applicable to administrative hearings instituted pursuant to pertinent statutory and regulatory provisions.

N.J.A.C. 13:2-19.7 is a proposed new section which restates, clarifies and implements the intent of the provisions of N.J.S.A. 33:1-31. Proposed subsection (a) provides that a revocation shall render a license and the officers, directors, and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate licensee ineligible to hold or receive any license, or work, in any capacity in any licensed premises for a period of two years from the effective date of the revocation. A second revocation for the ownership categories cited herein shall result in ineligibility to hold any license or work in any licensed premises at any time after the effective date of the revocation. Proposed subsection (b) codifies the Director's recent decision in the case of *In the Matter of Disciplinary Proceedings Against Medford Village Resort and Country Club,* Agency Docket Nos. S-91-18636 and S-91-18639, OAL Docket No. ABC 3111-92 (decided Aug. 22, 1994), ____ *N.J.A.R.* 2d (ABC) ____. This proposed provision provides that the Director shall determine, in accordance with pertinent law and articulated standards, exactly which persons or entities are affected by an order of revocation when a license is transferred prior to the time the Director has ordered the revocation.

Subchapter 20: The proposed readoption of this subchapter with amendments implements pertinent law prohibiting the commercial transportation of alcoholic beverages into, out of, or within the State unless the vehicle transporting is properly licensed by the Division. N.J.S.A. 33:1-2 and 28. It is noted that most State issued licenses that authorize the production or wholesaling of alcoholic beverages in this State also carry the privilege of transporting these products pursuant to regulations. Retail consumption and retail distribution licensees also exercise this privilege. Amendments are discussed in the specific sections referred to hereafter.

N.J.A.C. 13:2-20.1 states the requirement that the transportation of alcoholic beverages into, out of, or within the State must be done in a vehicle that is leased, owned or contracted for by a New Jersey licensee that has been issued a transit insignia or special transportation insignia. N.J.A.C. 13:2-20.2 sets forth the invoice requirements applicable to the delivery of alcoholic beverage to retail licensees. This section is amended to set forth the criteria that a licensee must demonstrate that it made an emergency delivery in a vehicle which was not properly permitted, and thereby present a successful affirmative defense to a charge alleging violation of N.J.A.C. 13:2-20.1. This amendment reflects and is in response to the frustration felt by many retail licensees who were exposed to disciplinary proceedings for circumstances beyond their control.

N.J.A.C. 13:2-20.3 sets forth the document requirements for transportation and deliveries made by State licensees. It includes the requirements necessary so that farm and plenary winery licensees can utilize a parcel delivery service to make deliveries to authorized consumers. This section is amended to conform to law by noting that shipments of wine, from plenary and farm winery licensees, can be authorized not only by in-person purchasers, but also by orders by mail or telephone if the licensee has a signed authorization from the person placing the order. Another amendment to this section provides that wine shall be shipped as a restricted delivery and only to the residence of the person who placed the order. A restricted delivery is a delivery that will be made only to the addressee or to someone authorized by the addressee to receive the delivery. *Cf.,* 39 CFR Pt. 3,0001, Subchapter C, Appendix A, Classification Schedule, SS-15-Restriction Delivery.

N.J.A.C. 13:2-20.4 sets forth the documents and information required to accompany the delivery of alcoholic beverage into, out of, or within the State.

N.J.A.C. 13:2-20.5 notes the various standards for the issuance of insignia for vehicles that are authorized to transport alcoholic beverages.

N.J.A.C. 13:2-20.6 identifies the application process and fees required to

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obtain a regular or special transit insignia, or a transportation license insignia. This section is amended to reflect a statutorily mandated insignia fee increase from $25.00 to $50.00. Additionally, it is amended to require that a parcel delivery service must be licensed by the Director. It is also amended to provide that a copy of an original invoice must be retained for one year at the premises of the licensee and made available for inspection to persons authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act. The amendment requires that an invoice must be attached to every package and must contain the purchaser's name, address, destination and the quantity of wine being shipped and place of purchase.

N.J.A.C. 13:2-20.7 sets forth the term, renewal requirements and expiration date for the issuance of these various insignia.

N.J.A.C. 13:2-20.8 identifies the location to affix transit insignia and transportation license insignia to commercial vehicles as well as special transit insignia affixed to passenger vehicles.

N.J.A.C. 13:2-20.9 provides various restrictions that are applicable to vehicles that bear insignia, such as requiring a replacement of an insignia that has become defaced or damaged.

N.J.A.C. 13:2-20.10 confirms that a licensee consents to the inspection and search of the transporting vehicle without warrant by persons authorized to enforce the Alcoholic Beverage Control Act.

N.J.A.C. 13:2-20.11 is a proposed new section which sets forth the duty of personnel delivering alcoholic beverages to consumers to determine that the party signing the delivery receipt is of legal age to purchase and consume alcoholic beverage. It further provides that failure to carry out this duty may be the basis for a suspension or revocation of the employer's license.

Subchapter 21: The proposed readoption of this subchapter, with amendments and deletion of N.J.A.C. 13:2-21.2(b), will continue the regulation of the transportation of alcoholic beverages, for commercial purposes and personal use, into, through or out of the State. Transportation for commercial purposes is regulated in accordance with pertinent law and this subchapter sets forth available licenses or permits to identify and authorize the entity or person transporting alcoholic beverages into or out of New Jersey. The permits in this subchapter authorize transportation of alcoholic beverages in a limited manner (as to time or scope) and such permits are generally acquired by persons not regularly involved in the alcoholic beverage business. Amendments are discussed in the specific sections referred to hereafter.

The transportation of alcoholic beverages in a personal vehicle within this State for personal use is no longer subject to statutory limitations on quantity and therefore N.J.A.C. 13:2-21.2(b), which discusses the limits on the quantity of alcoholic beverages, for personal use, that a person may transport within the State, is proposed for deletion. The fee for a permit to import alcoholic beverages from outside the State for personal consumption has been increased from $5.00 to $25.00 in accordance with law. N.J.A.C. 13:2-21.5(b) is also amended to allow a permit to remain in effect for the duration of a trip for a single shipment, even if the trip duration is longer than 24 hours from the time of issuance. Provisions in this subchapter are also proposed for amendment to reflect language changes for clarification and styling purposes.

N.J.A.C. 13:2-21.1 states the general principle that transportation of alcoholic beverages into or out of New Jersey is prohibited unless an appropriate license or permit has been issued under this subchapter or subchapter 20.

N.J.A.C. 13:2-21.2 sets forth the limits, in accordance with N.J.S.A. 33:1-2, for the transportation of alcoholic beverages for personal use in an individual's own vehicle into the State from a point outside New Jersey. Subsection (b) is repealed to reflect a recent statutory amendment removing the limits on transportation, within the State, of alcoholic beverages for personal use. A statutorily mandated fee change from $5.00 to $25.00 for a Special Permit has been noted in this section.

N.J.A.C. 13:2-21.3 concerns transportation through the State and identifies the invoice requirements needed to verify interstate transportation.

N.J.A.C. 13:2-21.4 identifies the Limited Transportation Permit issued by the Director to authorize non-intrastate commercial transportation. The application process, the permit requirements, permit term, and cost for insignia are set forth. It is noted that the provision providing an expiration on June 30, 1993 and a subsequent extension until September 30, 1993 for Limited Transportation Permits and insignia is proposed for repeal as it is no longer necessary. The section is also amended to delete a requirement for a duplicate form being filed.

N.J.A.C. 13:2-21.5 sets forth the procedures, fees and requirement for the issuance of Emergency Trip Permits by either the Division or its authorized agents. These permits authorize a single transportation either into or out of the State and are generally acquired by those who do not regularly transport alcoholic beverages. An amendment provides that an Emergency Trip Permit for a single shipment may not extend beyond the duration of the trip, or for 24 hours from the issuance of the permit, whichever period is longer.

N.J.A.C. 13:2-21.6 confirms the prohibition against unlicensed transportation and that violations of this subchapter may result in seizure and forfeiture of vehicles in accordance with N.J.S.A. 33:1-66.

N.J.A.C. 13:2-21.7 contains provisions requiring a permit holder's consent to search, by authorized persons without warrant, of vehicles utilized in furtherance of the permit.

Subchapter 22: The proposed readoption of this subchapter, with amendments and the repeal of section N.J.A.C. 13:2-22.10, will continue the determination of the Director, made in accordance with N.J.S.A. 33:1-12.40 through 12.48, to establish an initial and continuing education program for holders of plenary retail distribution licenses and limited retail distribution licenses issued pursuant to N.J.S.A. 33:1-12. Provisions in this subchapter are also proposed for amendment to reflect language changes for clarification and styling purposes. Other amendments are discussed in the specific sections referred to hereafter.

This subchapter authorizes the Division to implement the legislative intent that retail alcoholic beverage distribution licensees should be required to periodically demonstrate a knowledge and understanding of the regulations, laws, and public policies of the State impacting on the alcoholic beverage industry. The holder of a plenary retail distribution license is authorized to sell all types of alcoholic beverages at retail to consumers in original containers for consumption off the licensed premises only. The holder of a limited retail distribution license is authorized to sell only unchilled brewed malt alcoholic beverages in quantities of not less than 72 fluid ounces at retail to consumers in original sealed containers for consumption off the licensed premises. This type of a limited distribution license, by law, can only be issued for premises operated by the licensee as a bona fide grocery store, meat market, delicatessen or other food store at which other groceries are sold at retail.

N.J.A.C. 13:2-22.1 establishes the requirement for plenary and limited retail distribution license holders to successfully complete an educational training program as set forth in this subchapter.

N.J.A.C. 13:2-22.2(a) provides that all current holders of plenary and limited retail distribution licenses must attend and successfully complete an initial educational training program within nine months of March 9, 1994. This chapter is amended to recognize that March 9, 1994 was the date on which the subchapter became operative. Since all affected licensees had to complete the training program within nine months of that date, all persons now acquiring such a license or an interest in such a license will have to complete the training within nine months of the acquisition of same. Subsection (b) defines a license holder as any person or entity who acquires a new license, an approved person-to-person transfer of a license, or a change occurs of $33^1/_3$ percent or more of the stock of a corporate license. Subsection (c) is amended to require that all holders of the subject licenses who have successfully completed the initial educational training program must have appropriate individuals attend and complete any supplemental continuing educational training programs if same is determined necessary by the Director.

N.J.A.C. 13:2-22.3 sets forth which individuals must attend the training program. The sole proprietor of an individually owned license must attend, at least one partner for a license held by a partnership must attend, and a corporate officer or stockholder who owns 25 percent or more of the corporate stock who is actively engaged in the operation of the business must attend. A manager, designated on the license application, is also required to attend and a licensee can register other employees, on a space available basis, who are not mandated to attend by law. An amendment to this section requires where an owner, partner or holder of 25 percent of the corporate stock is not actively involved in the operation or control of the business, then a manager must be disclosed on the license application and such manager must attend the training. A further amendment provides that where a licensee holds more than one license subject to the requirements of this subchapter, at least one person for each license must attend and complete the training.

N.J.A.C. 13:2-22.4 provides that the training programs shall be made available and accessible to the subject licensees and programs shall be offered at least once every three months, subject to need, in each of the three geographic areas covered by the three telephone area codes in this State; as well as at least once annually on a Statewide bases.

N.J.A.C. 13:2-22.5 reflects the statutory authorization granting discretion to the Director to contract with a non-profit educational organization to administer all or part of the educational training program.

N.J.A.C. 13:2-22.6 provides general oversight by the Director in the establishment and annual revision of the course content and approval of instructors. This section identifies the course content, which includes but is not limited to, an explanation of the provisions of Alcoholic Beverage Control

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Act, the Division's regulations, municipal law and regulations, disciplinary and adjudicated procedures and other policies and legal requirements relating to the alcoholic beverage industry. The curriculum for any supplemental training program, should such a program be required, shall include, but is not limited to, changes in the law, regulations, or market conditions.

N.J.A.C. 13:2-22.7 (a) provides for the payment by each attendee of a registration fee in amount not less than $50.00 nor more than $150.00. Subsection (b) further provides for the schedule of fees to be published in the Division's Alcoholic Beverage Control Bulletin. Subsection (c) provides that if a non-profit educational organization is contracted with by the Director the organization shall accept the full fee and forward 20 percent of the fee to the Director within seven business days for deposit in the State Treasury. The balance of the fee can be retained by the educational organization to reimburse it for costs. Subsection (d) requires the educational organization to maintain true and accurate books of account concerning all aspects of the operation which records shall be made available for inspection by the Director upon demand. An annual report is also required and the Director may require the posting of a performance bond.

N.J.A.C. 13:2-22.8 provides for a Certificate of Educational Training to be issued to a licensee upon successful completion of the training program. Subsection (b) notes the procedure whereby a licensee can apply to the Director for deferment of the training requirement. The Director can issue an Order of Deferment extending the time for training after review of the deferment request accompanied by a non-refundable processing fee of $25.00. An amendment is proposed to delete the limitation that an Order of Deferment cannot exceed six months.

N.J.A.C. 13:2-22.9 lists the sanctions that will be imposed for a non-excused failure to attendance or failure to successfully complete the required training program. The sanctions range from a $250.00 penalty in lieu of formal disciplinary proceedings for a first failure to the institution of formal disciplinary proceedings for a fourth consecutive failure to attend or successful complete the required training program. The institution of disciplinary proceedings can lead to an indefinite suspension of the license, with leave granted to the licensee to lift the suspension upon payment of $2,000 and proof of satisfactory completion of the education training program. An amendment is proposed to provide for suspension or revocation of any licensee who makes false or misleading representations in a petition for deferment.

N.J.A.C. 13:2-22.10 is proposed for repeal as the operative date of this subchapter has been determined to be March 9, 1994, when the Director established the initial educational training program in accordance with the enabling legislation codified at N.J.S.A. 33:1-12.40 through 12.48.

Subchapter 23: This subchapter is proposed for readoption with amendments. The readoption will continue the regulatory scheme which governs the conduct of a licensed business by a licensee or permittee and the activities which occur upon the licensed premises. This subchapter implements the public policy objectives expressed by the Legislature, such as alcoholic beverage activity should be strictly regulated to foster moderation and responsibility in the use and consumption of alcoholic beverages; consumers should be protected against fraud and the industry should be protected against infiltration by known criminals; the protection of the collection of taxes; and the providing of a framework which recognizes the beneficial aspects of competition. N.J.S.A. 33:1-3.1.

The Director is authorized to make rules and regulations necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages. The pertinent provisions of N.J.S.A. 33:1-39 provide for the regulation of such subjects as hours of sale, racketeering, gambling, practices unduly designed to increase consumption of alcoholic beverages and other subjects which are necessary in the fair and comprehensive administration of the law. N.J.S.A. 33:1-39. This subchapter articulates those regulations governing a licensee or the conduct of the licensed business, the practice or policy derivative of a statutory provision or public policies established or reinforced by the Division.

This subchapter has been amended to reflect a change in language, substituting the proposed verb "prescribed" for the current verb "promulgated" as well as other changes in existing language for purposes of style and clarification. Additionally, amendments are proposed concerning the inclusion of "gambling paraphernalia" being prohibited on the licensed premises; clarification of hours of sale during the observance of Eastern Standard and Daylight Savings time changes; permitting licensees to comply with the requirement of the maintenance of an employee list on the premises by having the information in a computer system accessible from the licensed premises and immediately retrievable upon request; and the type of records and information required to be contained in books of account. Amendments are discussed in the specific sections referred to hereafter.

N.J.A.C. 13:2-23.1 prohibits a licensee from serving alcoholic beverages to persons under the legal age or to persons who are actually or apparently intoxicated.

N.J.A.C. 13:2-23.2 allows a municipality to prohibit, by ordinance, the retail sale of alcoholic beverages or the consumption of same on a licensed premises, during elections.

N.J.A.C. 13:2-23.3 requires licensed premises to be closed during a public emergency or investigation of a crime.

N.J.A.C. 13:2-23.4 prohibits the house-to-house and telephone solicitations of alcoholic beverages.

N.J.A.C. 13:2-23.5 prohibits unlawful activity involving narcotics, other unlawful drugs, and the presence of persons of ill repute such as prostitutes or criminals in or upon the licensed premises, and also prohibits the licensed premises from being accessible to any illegal activity or enterprise.

N.J.A.C. 13:2-23.6 prohibits lewd and immoral activity, brawls and nuisances on licensed premises.

N.J.A.C. 13:2-23.7 prohibits illegal lotteries or gambling on licensed premises. An amendment is proposed to include any gambling paraphernalia from being possessed by a licensee or being allowed upon the licensed premises.

N.J.A.C. 13:2-23.8 governs the hours of sale concerning the change of hours from Eastern Standard time to Eastern Daylight Savings time. Amendments are proposed for clarification purposes only.

N.J.A.C. 13:2-23.9 prohibits the manufacture, transport and sale of adulterated alcoholic beverages.

N.J.A.C. 13:2-23.10 prohibits the receipt of alcoholic beverages transported in violation of law.

N.J.A.C. 13:2-23.11 prohibits open containers on distribution licensed premises. An exception is permitted for open bottles returned by a customer as defective pending return to the manufacturer or wholesaler.

N.J.A.C. 13:2-23.12 prohibits the receipt of alcoholic beverages from unauthorized sources.

N.J.A.C. 13:2-23.13 requires the display of the license certificate and the maintenance, on premises, of the employee's list and license application forms. An amendment is proposed permitting a licensee to comply with the requirement of keeping the employee list if the information is contained in a computer system accessible from the licensed premises, and the information is able to be immediately produced.

N.J.A.C. 13:2-23.14 prohibits the possession on licensed premises of indecent and lewd materials.

N.J.A.C. 13:2-23.15 incorporates the Federal laws and regulations concerning contents of fill of an alcoholic beverage container.

N.J.A.C. 13:2-23.16 contains a description of various prohibited promotions. Its purpose is generally to reduce the likelihood of over-consumption of alcoholic beverages. It is proposed for amendment to allow authorized consumer alcoholic beverage tastings and tasting dinners under described conditions and in accordance with listed restrictions under N.J.A.C. 13:2-37.1. Amendments are proposed to codify a long term policy of the Division which prohibits the offering of an alcoholic beverage as a prize, gift or award. One amendment is proposed to allow off-premise promotions which offer a purchaser something of value as well as offering mixed case discounts, both of which are presently prohibited. An additional amendment is proposed to expand the types of gift items which can be included in off-premise promotions, where there is an alternate means of participating in the promotion that is not unduly burdensome on the consumer. The Division has proposed this amendment to permit retail licensees that exercise the off-premise sales privilege to offer manufacturer, supplier or wholesaler on-pack or in-pack promotional gift items, entries to contests, sweepstakes or merchandise purchase offers provided there is an alternative means of entry that is not unduly burdensome on the consumer. A further amendment clarifies that any offer of any prize or item of value cannot be made to a person under the legal age to purchase or consume alcoholic beverages. A final amendment, by deleting "of" and adding "or," corrects a typographical error contained in the last readoption.

N.J.A.C. 13:2-23.17 prohibits possession of chilled malt alcoholic beverages by holders of limited retail distribution licenses other than chilled draught malt alcoholic beverages in containers of at least 7.75 gallons.

N.J.A.C. 13:2-23.18 prohibits licensees or their employees from soliciting alcoholic beverages as a gift from patrons.

N.J.A.C. 13:2-23.19 prohibits a licensee from substituting a non-alcoholic beverage or another brand other than ordered by a customer unless agreed to by the customer.

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N.J.A.C. 13:2-23.20 prohibits a licensee or its employees from being intoxicated while working on licensed premises.

N.J.A.C. 13:2-23.21 prohibits the storage of any alcoholic beverages except on licensed premises, public warehouses or pursuant to a Special Permit. An amendment is proposed to clarify that the storage of alcoholic beverages other than the licensee's is allowed on its premises, although same may not exceed 72 hours following delivery at the licensed premises and it must be part of the beverages purchased, of a cooperative order, which was made by a fellow member of the cooperative.

N.J.A.C. 13:2-23.22 requires that tap markers indicate the brand of alcoholic beverage being drawn from a keg or automatic dispensing system.

N.J.A.C. 13:2-23.23 prohibits the possession of any alcoholic containers which does not bear a label descriptive of the contents or indicia of tax payment.

N.J.A.C. 13:2-23.24 prohibits a licensee from placing an order for an alcoholic beverage with any individual not properly licensed to solicit an order.

N.J.A.C. 13:2-23.25 prohibits a retail licensee from having any interest in the manufacturing or wholesaling of alcoholic beverages.

N.J.A.C. 13:2-23.26 prohibits a licensee from employing or having anyone connected with the business who refuses to submit to fingerprinting for criminal background searches by the Director or municipal issuing authority.

N.J.A.C. 13:2-23.27 sets forth the activities which are prohibited during periods of suspension.

N.J.A.C. 13:2-23.28 confirms that a licensee is responsible for the acts, conduct and deeds of its employees.

N.J.A.C. 13:2-23.29 authorizes the retention of evidence and warrantless search of licensed premises by authorized Division personnel and other designated persons.

N.J.A.C. 13:2-23.30 requires all licensees to produce documents for investigations and prohibits licensees from hindering investigations.

N.J.A.C. 13:2-23.31 prohibits a law enforcement officer from having an interest in a liquor license and regulates a law enforcement officer's employment by a licensee. The section also sets forth the procedure for employment of police officers and the restrictions applicable to their employment as established by N.J.S.A. 33:1-26.1.

N.J.A.C. 13:2-23.32 requires the maintenance of books of account of receipts and expenditures in connection with the operation of the licensed business. Amendments are proposed to clarify the language of existing regulations which require permanent and true books of account concerning investments in the licensed business, including loans, and the disposition of such investments, and that such books be kept for an unlimited period of time. A further amendment clarifies existing language which requires the maintenance of not only all moneys received in the ordinary course of business but also anything of value received outside the ordinary course of business.

Subchapter 24: This subchapter is proposed for readoption with amendments and deletion of certain provisions contained in the various sections. This subchapter governs the permissible trade and marketing practices in the industry and provides appropriate regulatory control of licensees in the sale and marketing of alcoholic beverages in the State. This subchapter has been amended to reflect changes in existing language for purposes of style and clarification. Substantive amendments discussed below in their specific sections clarify requirements regarding the filing of information as part of the Current Price List; allow manufacturers, suppliers, importers, wholesalers or distributors to make donations to bona fide charitable organizations; permit licensees to sell alcoholic beverages in combination with another alcoholic beverage products which sale was previously limited to prepackaged holiday gift packages; permit retailers to offer mixed case discounts; relax restrictions on the ability of manufacturers and suppliers to offer rebates and coupons on multiple purchases. These amendments have been determined to be appropriate for adoption to allow consumers to participate in, and licensees to offer, the same marketing programs available in other states, since they have been determined to not conflict with the underlying purposes and intent of the Alcoholic Beverage Control Act.

N.J.A.C. 13:2-24.1 mandates that manufacturers, suppliers and wholesalers offer the same prices for products as well as the same credit terms to all its purchase competitors. Exceptions are permitted in specific circumstances but regional or predatory pricing is prohibited.

N.J.A.C. 13:2-24.2 prohibits a manufacturer, supplier or wholesaler from discriminating in providing to purchaser competitors any services, facilities or equipment, or in conditioning any offer upon the future purchase of any alcoholic beverages. The granting of any commission, fee or compensation, or any allowance or discount in lieu thereof is also prohibited except for the reasonable value of services rendered.

N.J.A.C. 13:2-24.3 prohibits activities of a licensee or registrant in contracting or combining in the form of a trust or otherwise, or conspiring in restraint of trade or commerce in alcoholic beverage activity.

N.J.A.C. 13:2-24.4 provides a comprehensive regulation of wholesale practices in the offering of credit to retail licensees, the procedures to be followed and the consequences of retailer default. The primary objective of this rule is to establish industry stability in this aspect of regulation and practice as well as the protection of the alcoholic beverage tax base.

N.J.A.C. 13:2-24.5 continues the requirement that any seller of alcoholic beverage in this State must maintain, for three years, a Historic Price Listing and Marketing Manual noting prices charged to wholesalers as well as the marking services, facilities, equipment, advertisements and promotions offered to wholesalers. Wholesalers must be notified by suppliers one month in advance of the prices they will be charged for the next succeeding month.

N.J.A.C. 13:2-24.6 sets forth the requirements for licensees who intend to sell to retail licensees. These include the maintenance of a Historical Price List and Marketing Manual for three years. The notice and recordkeeping requirements of the wholesalers Current Price List is set forth and continued to require all existing information. In addition, amendments are proposed to require that the following information to be included in the Price List: prices of per unit costs; the brand registration number in accordance with N.J.A.C. 13:2-33.1; and all promotional point-of-sale items, holiday combination gift, combination product packages or other retailer incentive programs. Another amendment provides that no retailer shall accept delivery of anything from any manufacturer, supplier or wholesalers other than upon terms as set forth in the Current Price List. An amendment is proposed that any re-publication of the filed Current Price List must be published in its entirety unless conspicuously noted otherwise.

N.J.A.C. 13:2-24.7 concerning marketing initiatives is proposed for amendment which will allow wholesaler and supplier licensees to obtain a special permit to make donations of alcoholic beverages not only to qualified industry trade organizations but now also to bona fide charitable organizations.

N.J.A.C. 13:2-24.8 confirms the prohibition, applicable to licensees selling at wholesale or retail, against selling any alcoholic beverage below cost. The definition of cost is set forth and the manner of applying that definition to after acquired identical products is provided.

N.J.A.C. 13:2-24.9 concerning combination and tied sales is proposed for amendment to allow licensees to offer combination gift packages that are pre-packaged as a unit for sale. The part of this section which is proposed for deletion is the prohibition which forbids licensees from offering mixed case sales or discounts, as long as products can be purchased individually and not only in combination. It is also amended to recognize the expansion by recent legislative amendments to permit the sale of gift packages by retailers which contain alcoholic beverages in combination with other suitable objects, notwithstanding any local ordinances to the contrary.

N.J.A.C. 13:2-24.10 clarifies certain references and practices which cannot be included in any advertising material or advertisement by a manufacturer, supplier, wholesaler, retailer or registrant. The regulation also sets forth applicable requirements when alcoholic beverages are priced in an advertisement by non-identically owned licensees. A proposed amendment adds the term "lewd" to those materials which are prohibited from being included in any advertising material so as to conform to the provisions of N.J.A.C. 13:2-23.6.

N.J.A.C. 13:2-24.11 governs the offering of manufacturers' rebates and coupons for consumer refunds on the purchase of alcoholic beverages. Amendments are proposed to expand the ability and manner in which manufacturers distribute rebates and coupons to consumers and to delete the restrictive reasons why such rebates cannot be now offered. Amendments are proposed to repeal the limitation of offering no more than one rebate per household and the prohibition against offering multiple purchase rebate offers. Amendments are proposed to expand the manner in which such rebate coupons can be offered. A further amendment is proposed to clarify the ability of a retail licensee to advertise a reduction in the price along with the net sale price of an alcoholic beverage, based upon redemption of a manufacturer's rebate or coupon.

N.J.A.C. 13:2-24.12 establishes the registration procedures for persons who provide alcoholic beverage display materials or advertising promotion services to or for licensees. An amendment is proposed which will delete the requirement imposed upon display companies to file quarterly reports of their activities with the Division. This repeal of the quarterly reporting requirement reduces an administrative burden on licensees, permittees or registrants

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although the information contained therein must be produced either by the licensee or display company upon demand of the persons authorized to inspect same under the law.

Subchapter 25: This subchapter is proposed for readoption without amendment. It regulates the warehousing and storage of inventory and the authorized purchase and distribution of same by plenary, limited and wine wholesale and state beverage distributor licensees.

N.J.A.C. 13:2-25.1 requires a plenary or wine wholesale licensee to warehouse its product in a New Jersey warehouse for at least 24 continuous hours before delivery.

N.J.A.C. 13:2-25.2 requires that a wholesale class licensee must be registered as an authorized distributor by the brand owner or acquire the product from an authorized New Jersey wholesale licensee in order to sell a product to a New Jersey retail or wholesale licensee for resale in the State.

N.J.A.C. 13:2-25.3 clarifies the privileges of a state beverage distributor license that they can only sell to retailers or consumers. It also mandates that such licensee must obtain their malt alcoholic beverages from an authorized source and can only sell product from inventory which has been stored for at least 24 hours in their warehouse.

Subchapter 26: This subchapter authorizes cooperative purchases and transportation of alcoholic beverages by retail licensees. Various standards, limitations or obligations are set forth by these rules addressing activities such as the number of licenses that can form a cooperative, the manner in which licensees can join or leave cooperatives, conditions required for credit sales and invoicing and the responsibility of licensees for the activity of the cooperative purchases or transportation.

This subchapter has been amended to reflect changes in existing language for purposes of style and clarification. Other amendments are discussed in the specific sections referred to hereafter.

A proposed amendment to N.J.A.C. 13:2-26.1(a)1 will allow a cooperative to hire employee(s) to act in an administrative or management capacity for the cooperative's purchase, storage and transportation of alcoholic beverages. The employee must meet certain qualification requirements and can have no ownership, employment or financial interest in a Class A, B or C license.

Proposed N.J.A.C. 13:2-26.1(a)12 authorizes a cooperative to maintain a public warehouse for the use of its members as long as the cooperative complies with pertinent law and regulation governing such activity.

Proposed amendment N.J.A.C. 13:2-26.1(a)13 authorizes a cooperative to maintain a bank account and to assess and charge members for the cost and expenses of establishing, maintaining and providing services to the cooperative.

Subchapter 27: This subchapter is proposed for readoption with substantive amendments to relax the current prohibition of the sale, distribution or marketing of alcoholic beverage products, packaged in a bottle or can marked for deposit in another state, to consumers in New Jersey.

N.J.A.C. 13:2-27.1 incorporates Federal regulations relating to labeling and standards of fill concerning all types of alcoholic beverages.

N.J.A.C. 13:2-27.2 is proposed for amendment. It was adopted as a new rule in 1984, in response to the Division's concerns that potentially significant quantities of malt alcoholic beverage containers, marked for return deposit in neighboring states, were being obtained from unauthorized, out-of-State sources by State Beverage Distributor (SBD) licensees in contravention to existing regulations.

In 1978, the Division proposed certain rules (N.J.A.C. 13:2-25.2, 25.3 and 33.1) for adoption as part of the process of "de-regulation" of the alcoholic beverage industry in New Jersey. Those rules basically required that alcoholic beverage products be acquired only from brand owners or authorized distributors of the brand owner.

The effect of all of the Division's proposed de-regulatory amendments were stayed during the period from 1978 through 1980 as a result of actions brought against the Division by various parties. After the New Jersey Supreme Court substantially affirmed the Division's proposed amendments (*Heir v. Degnan,* 82 *N.J.* 109 (1980)) the then-Director stayed the effect of these particular regulations until August 10, 1982, and shortly thereafter another stay was entered by the Appellate Division pursuant to legal action instituted by affected distributors.

As a result of the stay of these regulations, two SBD licensees (and later a third SBD and a limited wholesale licensee) obtained products from other than the brand owner or authorized agent and then resold those products to New Jersey retail licensees. This practice is known as "transshipping" alcoholic beverages.

As a consequence of the institution of various legal actions, the Division conducted public hearings on the reported problems caused by the transshipping of alcoholic beverages, principally beer. At the conclusion of the hearings, the then-Director determined that this practice could have an adverse impact upon New Jersey consumers, retail and wholesale licensees as well as decreased tax revenue being paid on alcoholic beverages. The then-Director determined that consumers could be forced to purchase these transshipped products at a higher price from retailers who would have to raise their prices for product to include the cost of the deposit. This would result in New Jersey consumers paying higher prices without the ability to recoup the deposit in New Jersey. Furthermore, there was no statutory or regulatory authorization for the retailers to sell the product at a higher price and those retailers that did not sell the product in deposit marked containers would be placed at a competitive disadvantage. Finally, New Jersey brewery and wholesale licensees were prohibited from selling their non-deposit marked containers to New York or Delaware wholesale licensees. The Director determined it was appropriate to promulgate a concomitant prohibition against such containers being sold by out-of-State licensees into New Jersey, and that provision was enacted as N.J.A.C. 13:2-27.2.

During review of this section as part of this readoption proposal, the Division has reassessed its impact upon the public, and retailers and wholesalers. That reassessment has revealed that the effect of existing provisions appears to have exceeded its stated purpose. Since the time that this section was originally adopted, the Legislature has enacted statutory provisions which require all products sold in this State to be obtained from either the brand owner or the authorized agent of the brand owner (N.J.S.A. 33:1-2b. and 2.c) and has provided penalties are provided for noncompliance. N.J.S.A. 33:1-2d.

Additionally, the commercial reality of beer manufacture and marketing in the country has substantially changed. In 1983, there were 89 commercial breweries licensed in the United States. Since then numerous small and micro breweries have been established in response to consumer demand for different types of beer and malt alcoholic beverages. In fact, in 1993, there were 391 breweries reported in existence in this country. Compliance with this section's requirement is not cost effective since smaller brewers must develop separate labels on containers only for New Jersey. Thus New Jersey consumers are effectively prohibited from having or trying many such new products.

The Division notes that there has not been an indication of a significant problem with the transshipment of other types of alcoholic beverages, including "coolers" made from malt alcoholic beverages. For tax purpose reasons (that is, malt alcohol is taxed at a significantly lower rate than wine) most new coolers are made of malt alcoholic beverages. Again, since separate production lines and labeling are often not cost effective even for larger producers of alcoholic beverages, many new products are not being shipped into New Jersey.

As a result, this section is being proposed for amendment to provide that all alcoholic beverage products, other than certain malt alcoholic beverages, can be lawfully sold, distributed or marketed for resale to a New Jersey consumer, even if packaged in bottle or can marked for deposit of another state.

The Division provided informal pre-proposal advice to various interested parties that this section was being considered for repeal. In response, we have to date received a total of 833 mostly standard form letters from New Jersey beer wholesaler employees in support the current prohibition. Indeed, 448 of the letters (which are either exact copies of a form letter, or are handwritten copies or portions thereof) have return addresses of various New Jersey beer wholesalers.

Given this strong support for this regulation, and in recognition that it was enacted to address an ascertained problem in the transshipment of beer, the Director has determined to amend this section to remove the prohibition from selling deposit marked containers from everything other than malt alcoholic beverages. In reaching his determination, the Director has noted that the 1984 hearings into the transshipment of beer disclosed that "[t]ransshippers' interests lie in selling primarily to the larger, more lucrative retail accounts and at the same time *selling only the more popular products and packages. . . .*" *In Re: Todd Siefert, et al.,* 4 *N.J.A.R.* 294, 311 (1984) (emphasis added). As a result, the proposed amendment will allow the sale of malt alcoholic beverages in New Jersey of other than the "more popular products and packages" which can logically be said to comprise the most well-known and best selling brands of beer and malt ale. To ensure the continued economic viability of New Jersey's beer wholesalers and the protection of the tax base from transshipment of beer and malt ale, only brands which will be sold in relatively small quantities in New Jersey will be allowed in with deposit markings on their containers.

As a result, for malt alcoholic beverages only (other than "malt coolers" which under the proposed regulation also can be sold in New Jersey with deposit marked containers), those products will continue to be prohibited for sale in New Jersey if their containers have labels marked for deposit in

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another State. An exception is provided so that an appropriate officer of the brand registrant of the beer or malt ale may file an application with the Division and certify that total shipments of that product into New Jersey will not exceed 3,000 barrels or its container equivalent in the calendar year. This limitation is based upon recent legislation (N.J.S.A. 33:1-10.1c.) which established "restricted breweries" (more commonly known as brew pubs) in New Jersey and authorized same to brew up to 3,000 barrels of product per calendar year. As a result, the Legislature has identified 3,000 barrels as an appropriate limit for micro breweries and that limit shall be applied to products which are eligible for exemption from this regulation.

Moreover, reviewing information compiled on the commercial breweries located in the United States, the Director notes that nearly 400 breweries were licensed in 1993. Only 74 breweries were listed as producing more than 3,000 barrels, total. Thus, three quarters produced 3,000 or less barrels and their market share is listed as "0.00%. "Assuming that a brewery produces at least five different products, would increase the threshold total production figure to 15,000 barrels, if all of their product was sold in New Jersey, an unlikely scenario. Nevertheless, this threshold level would allow all but the top 38 breweries from selling all of the deposit marked containers in New Jersey (assuming none exceeded the 3,000 barrel per product limit). Significantly, the remaining breweries who could ship into New Jersey under this scenario produced less than 0.1 percent (or one tenth of one percent) of all the beer manufactured in the United States.

Information indicates that New Jersey residents consume approximately 2.6 percent of the total beer produced in the United States. Assuming a brewery would sell 2.6 percent of their total product in New Jersey, and further assuming that it only made one product, would allow a brewery to produce over 115,000 barrels and still meet the proposed limit in order to sell their deposit marked containers in this State. Under these assumptions, only the top 17 breweries would be foreclosed from selling *all* of their products in New Jersey. Nevertheless, these top 17 breweries accounted for over 98 percent of the beer produced in this country during 1994. Indeed, the top six brewers accounted for nearly 96 percent of the beer produced in 1994 and their top 10 products commanded more than 60 percent of the United States beer market.

Even the larger brewers may find commercial vitality in this proposed amendment. The beer market is changing with consumer demand being driven for new and ever changing types and brands of beer. Many of the larger brewers, even the largest, produce limited production runs of such beers and ales. Now they (assuming they will not exceed the 3,000 barrel limit) can sell many of their new, lesser known and purchased products in New Jersey without the need to have separate labels attached to them.

Subchapter 28: This subchapter sets forth guidelines under which a retail licensee can transfer wine for consumption on the licensed premises from original taxed containers to a decanter or other interim holding receptacle. The basis for this rule originated shortly after prohibition. The practice of certain licensees in re-bottling beverages which were transferred from its original barrel, cask, or other container for resale to the public, raised issues prevalent during prohibition regarding mislabeling of beverages. The proposed repeal of this subchapter is appropriate as it is an unnecessary requirement upon contemporary licensees in light of current industry practices. The Division's general experience with the transfer of wine for consumption on the licensed premises from original containers to a decanter, by contemporary licensees, does not reflect that this practice constitutes a violation of N.J.S.A. 33:1-88 which in the past was thought to otherwise prohibit this practice.

Subchapter 29: This subchapter identifies records of the Division and classifies the records as being public or confidential. The proposed readoption of this subchapter with amendments is necessary and proper to provide notice to the public and industry members of the type of records maintained by the Division and the procedures to obtain inspection or reproduction of the records. This subchapter has also been amended to reflect changes in existing language for purposes of style and clarification. The other amendment is discussed in N.J.A.C. 13:2-29.4 referred to hereafter.

N.J.A.C. 13:2-29.1 identifies those records which have been classified as public records and includes such records as license and permit applications, price and product information filings, pleadings, transcripts and orders relative to administrative hearings and other public records as defined by pertinent law.

N.J.A.C. 13:2-29.2 identifies those records which the Division considers confidential and includes such records as initial complaints alleging violations, investigative reports, tax reports, and other documents and questionnaires required to be filed with the Division for use in an investigative or disciplinary matter as authorized by the Director.

N.J.A.C. 13:2-29.3 confirms the right of every citizen of the State to inspect and copy public records at the Division's office during normal business hours and to obtain copies of such records upon payment of appropriate fees.

N.J.A.C. 13:2-29.4 allows storage of records at locations other than the licensed premises and in alternative modes (computer records) provided the information is readily retrievable. An amendment to this section clarifies that computer systems may be used to store records required by law if such records are retrievable within the time limits enumerated in the section. The licensee must apply to the Director for approval of alternate methods (other than the computer system as provided above) or locations for storage of any record required to be maintained by licensees.

Subchapter 30: The proposed readoption without substantive amendment of this subchapter will continue the procedure for registration of stills and distilling apparatus pursuant to N.J.S.A. 33:1-2.1. This subchapter has been amended to reflect a change in language, substituting the proposed verb "prescribed" for the current verb "promulgated."

This subchapter consists of six sections which define what items are to be registered, the form to be used in the registration process, the nature and contents of the certificate of registration, the need to seek permission from the Director before removing or selling a still or distilling apparatus and the exemption from these rules for stills and apparatus utilized in connection with a licensed distillery, rectifier or blender.

Subchapter 31: A basic principle of the New Jersey Alcoholic Beverage Control Act is that the manufacture, sale, transportation, warehousing, bottling and distribution of alcoholic beverages is illegal unless it is done in accordance with law and within the terms of a license or permit. N.J.S.A. 33:1-2. One of the sanctions provided by law for violations is the seizure and forfeiture of illicit beverages, vehicles containing same and property utilized in conjunction with the unlawful alcoholic beverage activity. N.J.S.A. 33:1-66. This subchapter provides for hearings on seized property and the consequences of forfeiture and is proposed for readoption with amendments. This subchapter has been amended to reflect a change in existing language for purposes of style and clarification.

N.J.A.C. 13:2-31.1 incorporates, by reference, the provisions of the Administrative Procedure Act regarding the hearing of contested administrative cases.

N.J.A.C. 13:2-31.2 sets forth three methods which can be utilized for a claimant to obtain the return of seized property prior to a final hearing (posting of cash bond equal to appraisal, surety bond in sum double the retail value or replevin action).

N.J.A.C. 13:2-31.3 implements the statutory provisions of N.J.S.A. 33:1-66, which established the standards to determine whether claims for return of seized property should be recognized or denied. The Director may return property if a claimant establishes good faith and unknowing violation of the law and a valid interest in the seized property. The Division proposes to add N.J.A.C. 13:2-31.3(e) which states that sale of forfeited property shall be conducted pursuant to the provisions in N.J.S.A. 52:27B-68, since subchapter 32, which currently sets forth procedures to sell forfeited property, is proposed for repeal.

N.J.A.C. 13:2-31.4 confirms that upon a matter involving seizure and forfeiture being determined to be a contested case, the hearing will be conducted in accordance with the Uniform Administrative Procedure Rules of Practice.

Subchapter 32: This subchapter is proposed for repeal. The subchapter sets forth the procedures to be utilized by the Director in the sale of property that has been seized and forfeited to the State of New Jersey. A review of pertinent law and regulations reveals that the Director of the Division of Purchase and Property, within the Division of Taxation, has the statutory authority to provide for the use and disposal of property which has been seized and forfeited to the State of New Jersey. N.J.S.A. 52:27B-68. In light of this statutory authority which is granted to the Division of Purchase and Property to dispose and sell forfeited property, it is no longer necessary for this subchapter to be utilized for the sale of forfeited property.

Subchapter 33: The proposed readoption of this subchapter, with amendment, will continue the regulatory provisions which govern the filing of information with the Division as to all alcoholic beverage products sold or offered for sale at wholesale or retail in the State. The information required in the brand registration filings includes the entity which either owns the product or is authorized by the owner to register the product in New Jersey. The brand registration also identifies those licensed wholesalers who are designated to offer the alcoholic beverage products for resale.

N.J.A.C. 13:2-33.1 is proposed for readoption without amendment and will continue the codification of the requirements for brand registration. The rule confirms the statutory provisions of N.J.S.A. 33:1-2(c) which mandate brand registration and cite the information that is to be filed in the brand

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registrations. It also mandates that the brand registration is to be filed by the brand owner or authorized agent.

N.J.A.C. 13:2-33.2 is proposed for readoption with amendments reflecting changes in the filing fees, required by by law, from $10.00 to $20.00 for initial filings and from $7.00 to $10.00 for the filing of an amendment.

Subchapter 34: This proposed new subchapter is in response to and implements amendments to N.J.S.A. 33:1-10. This legislative amendment was enacted on July 30, 1993 and created a new restricted brewery license. The law authorizes the holder to brew up to 3,000 barrels of 31 fluid gallons capacity per year. The license may be issued only to persons or entities which also have identical ownership of an active plenary retail consumption license operated in conjunction with a restaurant.

N.J.A.C. 13:2-34.1 requires an application for a restricted brewery license and sets forth the type of information that must accompany the application. The site of the restricted brewery license activity must be immediately adjacent to the retail license restaurant premises. The application will require submission of a sketch of the area in which the malt alcoholic beverages will be sold. Other required documentation includes proof of posting of a tax bond with the Division of Taxation; proof of registration as a brewer with the United Stated Bureau of Alcohol, Tobacco and Firearms; compliance with all local, county and or State requirements associated with manufacturing and waste water discharge; proof of notice to local issuing authority and certification from the local issuing authority that the applicant maintains ownership of an active plenary retail consumption license operated in conjunction with a restaurant.

N.J.A.C. 13:2-34.2 sets forth the fees for the operation of a restricted brewery license. The base license fee is $1,000 which entitles the licensee to brew up to 1,000 31 fluid gallon barrels per year. There is an additional $500.00 fee for every additional 1,000 barrels up to a 3,000 annual barrel limit in accordance with law.

N.J.A.C. 13:2-34.3 sets forth the definition of a restaurant and notes the requirement that the restricted brewery license shall be issued to persons or entities who have identical ownership of an active plenary retail consumption license operated in conjunction with an immediately adjacent restaurant.

N.J.A.C. 13:2-34.4 provides that a restricted brewery licensee may offer, without charge, no more than five ounces of a brewed malt alcoholic beverage for consumption on the licensed premises as a sampling of the product. This sampling cannot be offered to the same customer more than once for each malt beverage brewed on the premises during the hours of sale on any day. This rule also provides for sales for off-premises consumption and mandates compliance with pertinent regulations governing the display and sale of malt alcoholic beverages for off-premises consumption. The regulation further requires containers for off-premises consumption must be sealed refillable containers with labeling approved by the Director.

N.J.A.C. 13:2-34.5 implements the enabling legislation by requiring a hearing if the governing body of a municipality in which the license will be located files a written objection with the Director.

N.J.A.C. 13:2-34.6 provides that a disciplinary hearing against a restricted brewery license shall be separate and distinct from and not adversely affect the plenary retail consumption license unless the factual basis of the violation charged involves the operation of both licenses.

Subchapter 35: This subchapter, proposed for readoption with amendments consisting of two new definitions, sets forth the parameters that plenary or seasonal retail consumption licensees must follow in the sale of alcoholic beverages in a glass or open receptacle for sale on the licensed premises and for retail consumption licensees, without the broad package privilege, for the sale of alcoholic beverages original containers for consumption off the licensed premises.

N.J.A.C. 13:2-35.1 sets forth definitions of phrases utilized in the subchapter. Proposed definitions of "perimeter wall" of a barroom and "outside edge" of a sales counter are added to comport with longstanding Division policy and to clarify the provisions of this subchapter.

N.J.A.C. 13:2-35.2 provides that plenary retail consumption or seasonal retail consumption licensees, not holding the "Broad package privilege," are prohibited from selling or displaying for sale any alcoholic beverage in an original container for off-premises consumption except from and in the public barroom of the licensed premises.

N.J.A.C. 13:2-35.3 codifies the action of the Division in noting on the face of a renewal license certificate, for those licenses having the "Broad package privilege," that the license bears the privilege as provided by law.

N.J.A.C. 13:2-35.4 sets forth the requirements and prohibitions for making off-premises consumption sales by licensees without the "Broad package privilege."

N.J.A.C. 13:2-35.5 restricts package good sales to the bona fide principal barroom of plenary retail consumption licenses or seasonal retail consumption licenses which do not possess the "Broad package privilege."

Subchapter 36: The proposed readoption with amendment of this rule confirms the longstanding Division policy to consider requests to issue written advisory opinions.

N.J.A.C. 13:2-36.1 provides that the inquiry must identify the parties and reference a particular situation, concern Division regulations and address issues not previously articulated by the Division or which involve substantial questions of general applicability.

N.J.A.C. 13:2-36.2 is proposed for amendment to require the requesting party to advise the Division if the subject matter of the inquiry is an issue pending in any Federal or State court or in any administrative adjudicatory forum. A certification from the requesting party is also required if that party is aware that the subject matter of the inquiry is pending as described in the rule, to fully identify the forum and the nature of such proceeding.

N.J.A.C. 13:2-36.3 is proposed for repeal as it is not necessary in light of the general applicability and relaxation provision proposed for adoption in N.J.A.C. 13:2-1.9.

Subchapter 37: This proposed new subchapter allows licensees that exercise the on-premise consumption privilege to conduct consumer tasting events provided the licensees comply with the provisions of this subchapter. The proposed subchapter also allows authorized representatives of suppliers, manufacturers or wholesalers of alcoholic beverages to participate, for educational or informational purposes only, in consumer tasting events provided they obtain permits and file request forms with the Division.

Previously, Division regulations prevented consumption licensees from hosting consumer tastings or consumer tasting dinners. After receiving requests from various licensees and on review of laws and regulations, on September 12, 1994, the Director issued a Notice of Application for a Special Ruling on behalf of BGK, Inc., T/A The Hideaway, a plenary retail consumption licensee who sought temporary relief from the requirement of N.J.A.C. 13:2-23.16(d)3 which prohibited the pre-purchase of more than one drink through advance purchase admission as it applies to wine tasting dinners. Plenary retail consumption licensees sought relief from this regulation and to have the Director amend the regulation to exempt these types of promotions from the prohibition.

After receiving comments in support of and no comments in opposition thereto or requests for a hearing, the Director on October 28, 1994, found good cause to grant temporary relief to the applicant and other similarly situated licensees from the requirements of N.J.A.C. 13:2-23.16. The Director signed a Special Ruling that granted restaurateurs and other on-premise licensees relief from Division regulations to host consumer tasting dinners and tasting events upon receipt of a special permit. The Director determined that consumer wine tastings, including malt beverage and other alcoholic beverage tastings, could occur provided that the tastings were conducted under certain guidelines and with Division prior approval.

As a result of this Special Ruling, in 1994, the Division issued approvals for approximately three retail consumption licensed consumer tasting events, nine charitable consumer tasting events and 38 permits for supplier, manufacturer or wholesaler participation in such events. In the first four months of 1995, the Division issued approvals for approximately 39 retail consumption licensed consumer tasting events and six charitable consumer tasting events. The Division also issued 36 daily permits and 23 annual permits to suppliers, manufacturers or wholesalers to participate in such events. Based on a case-by-case review of these tastings, the Division has determined that consumer alcoholic beverage tastings and tasting dinners do not appear to violate this State's legislative purpose of fostering responsibility and moderation in the consumption and use of alcoholic beverages and thus do not negatively impact on public health, safety or welfare. Indeed, consumer samplings are among the most responsible ways to publicly consume alcoholic beverages. Consumer samplings are subject to significant criteria to ensure proper control including that the host must hold either a permit or license exercising an on-premise consumption privilege, the tasting must be conducted in connection with an educational program for alcoholic beverages; the event is limited to a set number of consumers; the serving sizes of the offered alcoholic beverages are limited and any supplier, manufacturer or wholesaler of alcoholic beverages who wishes to participate in a consumer tasting must receive a permit.

The proposed new rule will set forth a uniform approach to consumer tastings and consumer tasting dinners. The proposed new rule is supported by New Jersey plenary retail consumption licensees, suppliers, manufacturers and wholesalers as well members of the public.

Subchapter 38: This subchapter sets forth the permissible and prohibited hours of off premises sale of alcoholic beverages at retail. These rules also reflect the statutory provisions of N.J.S.A. 33:1-40.3, which permits malt

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alcoholic beverages and wine to be sold in original containers for off-premises consumption during the same hours as the sale of alcoholic beverages for consumption on the licensed premises is permitted in a municipality. It is proposed for readoption with amendments to reflect recent changes required by law as well as changes to existing language for purposes of clarification and style.

N.J.A.C. 13:2-38.1 provides that the sales of package goods are prohibited before 9:00 A.M. or after 10:00 P.M. except, that when on premises consumption of alcoholic beverages is authorized in any municipality, the sale of wine and malt alcoholic beverages in original containers for off-premises consumption shall also be authorized on the same days and during the same hours. This section is amended to clarify existing language. It is also amended to reflect recent changes in the law which prohibits, in cities of the first class, the sale or removal of any alcoholic beverage in its original container from any retail licensed premises before 9:00 A.M. or after 10:00 P.M. on any day of the week.

N.J.A.C. 13:2-38.2 allows municipalities that do not authorize the sale of alcoholic beverages for consumption on the premises, on Sundays, to authorize, by ordinance, the sale of wine and malt alcoholic beverages in original containers for off-premises consumption by retail distribution and State beverage distributor's licensees between the hours of 12:30 P.M. and 6:30 P.M. An amendment to this section clarifies pertinent law that any city of the first class, which prohibits Sunday sale for consumption on the premises, shall further result in no licensee in such city being allowed to sell any alcoholic beverage at retail in its original container for consumption off the licensed premises.

N.J.A.C. 13:2-38.3 is repealed in light of legislative enactments governing hours of sale which render this section inaccurate and inappropriate for readoption.

Subchapter 39: This subchapter sets forth the circumstances when alcoholic beverages may be returned by a retail licensee to a manufacturer or wholesale licensee. This subchapter is proposed for readoption with only a technical amendment.

N.J.A.C. 13:2-39.1 sets forth return policies that are customary and usual to the industry and notes the reasons which are recognized in order to properly return alcoholic beverages and the records required.

N.J.A.C. 13:2-39.2 sets forth the documentation which must accompany the alcoholic beverages that have been picked up from a manufacturer or wholesaler by a retailer, or by a solicitor for delivery to a retailer.

Subchapter 40: This subchapter provides a mechanism and procedure for the issuance, by county clerks, of identification cards to residents of their respective counties. The identification cards provide legal, acceptable proof of age for the purchase of alcoholic beverages. The rules set forth the specific form of the county identification cards; the fees to be charged; the requirement that the applicant demonstrate residency and provide two color photographs; and the wording to be contained on the card in reference to the use of the card as a valid defense by a licensee charged with the sale of alcoholic beverages to an underage individual. The only substantive amendment to this subchapter clarifies that duplicate driver's licenses from any state will not be accepted as proof of age or identity. This subchapter has been amended to reflect changes in existing language for purposes of style and clarification.

Subchapter 41: This new subchapter is proposed to promulgate rules which implement legislation and recent legislative amendments to N.J.S.A. 33:1-19.7. That statutory provision established a special plenary retail consumption license which can be issued to certain non-profit musical or theatrical corporations whose premises have a seating capacity of 1,000 persons or more. These special licenses can be issued even in municipalities which have reached or otherwise exceeded the maximum number of consumption licenses given their population.

N.J.A.C. 13:2-41.1 defines terms used in this subchapter, including "non-profit corporation," "licensed premises" and "restaurant operator."

N.J.A.C. 13:2-41.2 sets forth the issuance procedure for these special licenses and describes what a municipal issuing authority must do in order to obtain the Director's authorization that a special license can be issued by the municipality.

N.J.A.C. 13:2-41.3 provides the application and qualification process of a "restaurant operator" who wishes to obtain the Director's authorization in order to utilize the license issued to the non-profit corporation.

N.J.A.C. 13:2-41.4 contains the privileges and limitations inherent in such special licenses. Particularly, these licenses can only be utilized two hours before, during, and two hours after a performance. It also clarifies that this license only authorizes consumption on the licensed premises and does not authorize the sale of package goods for off-premises consumption.

N.J.A.C. 13:2-41.5 and 41.6 provide for procedures for person-to-person and place-to-place transfers as well as the procedures to follow in reporting changes in facts and corporate structure.

N.J.A.C. 13:2-41.7 provides that these special licenses can only be renewed by the qualified non-profit corporation which holds the license.

Appendix: The Appendix to N.J.A.C. 13:2 is repealed in its entirety. The Appendix has not been amended for a number of years and currently has no effect. Additionally, the rules, as readopted, contain no reference to the former Appendix or to any of the materials contained therein. Forms required by rule appear in the rule themselves and not in the Appendix. Since the materials contained in the Appendix are without specific reference in the rules and have not been readopted for a number of years, they are repealed by reference herein.

Social Impact

Some of the below noted amendments are proposed because they reflect changes in the law. Examples are: increases in various fees; establishment of new license privileges (restricted breweries, special consumption licenses for non-profit theater corporations); expansion of existing license privileges (plenary and farm wineries, home brewing of malt alcoholic beverages); imposition of new restrictions (limiting hours in which package goods sales may be made in cities of the first class); and removal of previous restrictions (marketing alcoholic beverages in combination with other suitable objects, transporting unlimited quantities of alcoholic beverages for personal use). Thus, these regulatory changes have no social impact independent of those resulting from the statutory changes.

Other amendments propose the repeal of regulatory provisions which merely duplicate provisions already existing in the current law or regulation, or are being consolidated with substantially equivalent provisions located elsewhere. Additional amendments are merely changes made in existing language for clarification and style purposes. These regulatory changes have no social impact since they result in no substantive changes.

The Division's regulations are scheduled to "sunset" on July 24, 1995 and, unless readopted, will expire and be without force and effect. The failure to readopt these rules would result in a chaotic, imprecise licensing, enforcement and appeal structure and would fail to give appropriate accord to specific statutory provisions of the Alcoholic Beverage Control Law and the Administrative Procedure Act.

Subchapter 1: There are approximately 850 State licenses currently issued for the manufacture, wholesale, storage, transportation and other processing of alcoholic beverages. A uniform method to obtain relevant information and provide a review, hearing and decision making process is necessary for a fair and comprehensive administration of the law. Citizens of New Jersey have the opportunity to be heard and provide input to the Director to assist in a determination regarding the fitness of an applicant or whether a licensee shall be denied the ability to continue to exercise the privileges of a State issued license. The amendment to require that an applicant for a State license give notice to the clerk of the municipality in which the licensed business is to be located, furthers the purpose of obtaining relevant information from the public and their interested municipal officials. The amendment requiring an applicant to submit for fingerprinting and financial disclosure advances the public interest in ensuring that only qualified persons receive alcoholic beverage licenses. The amendment expanding the ability of the Director to waive a rule when an applicant petitions in writing and demonstrates that the rule has caused an undue hardship, that the waiver will not unduly burden any affected parties and that the waiver is consistent with the purposes of the law, reflects the inherent powers reposed in the Director of an administrative agency and allows for prompt action when the circumstances require same.

Subchapter 2: This subchapter provides a uniform method to process, review and determine the propriety of the issuance of over 10,000 licenses privileged to sell alcoholic beverages at retail to citizens of the State of New Jersey and the public at large. The procedures in the subchapter allow citizens the opportunity to express concerns about license issuance, renewal or change in stockholders. This input results in a positive social impact in reinforcing a licensee's awareness that unacceptable social conduct at licensed premises, as well as violation of pertinent law, may result in a denial of the ability to continue to exercise the privileges of a licensee.

Subchapter 3: There is clear beneficial social impact in requiring municipalities to maintain complete and accurate records of persons and entities involved in alcoholic beverage activities in the municipalities throughout the State. The Division is able to verify and cross-check data by having municipalities transmit relevant information regarding the over 10,000 municipal licensees in an orderly and timely manner. The repeal of the provision requiring license certificates to have the State required 12-digit

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number placed thereupon, has no impact on society since the Division provides that service.

Subchapter 4: The requirement, set forth in this subchapter, of mandating a review of an application by the Director where the municipal issuing authority is disqualified from acting because one or more of its members have a direct or indirect interest in a license is in accordance with a primary tenet of pertinent law. The ". . . fair, impartial, stringent and comprehensive administration of this chapter," N.J.S.A. 33:1-24 and 1-39, is a well-settled principle expressed by the Legislature when it adopted N.J.S.A. 33:1-20. This statutory provision provides for independent review, by the Director, to eliminate any appearance of conflict by the local issuing authority when a member of that body has an interest in a liquor license application. The Division currently is responsible for 22 conflict licenses. The proposed amendment providing for the Division's action when conflict of interest situations occur in ways other than by a member having an interest in a license recognizes additional instances when an issuing authority may be unable to act upon a license application. Several provisions in this subchapter are also amended to expressly state that this subchapter is applicable to renewals of conflict licenses. This amendment is in conformance with law and other sections in this subchapter and has no substantive effect. The extension of the provision furthers the public interest by having the Director act as occurs in N.J.S.A. 33:1-20 conflict situations rather than having a stalemate occur. The social impact of this rule is further enhanced by the ability of the citizens of the municipality to note their concerns relative to an application filed by a member of the local governing body. The amendment which will permit the Division to accept regular rather than certified checks is a reflection of modern, everyday commerce and it will have a positive social impact.

Subchapter 5: Last year, over 5,000 social affair permits were issued to qualified organizations authorizing the availability of alcoholic beverages to attendees at dinners, fund raisers, carnivals, picnics and other events. Permits for these events have a positive social impact in that they assist qualified organizations in furthering their activities as part of the social fabric of a community.

The approximately 50 annual concessionaire permits that are issued by the Division also foster a positive social impact by allowing limited alcoholic beverage activity at State, county or municipal recreational facilities.

The permits issued pursuant to court order or operation of law, which authorize the sale of alcoholic beverages, assist the legal process and ensure a sale is in accordance with the provisions of the Alcoholic Beverage Control Act. Permits issued for other emergent situations authorize the Director to impose sufficient conditions to address temporary or special circumstances.

A proposed amendment to permit the Division to accept regular rather than certified checks is a reflection of modern, everyday commerce and it will have no social impact. The proposed amendment to require the filing of inventory reports only when determined by the Director, will reduce paperwork requirements on the permittees and will allow the Division to focus its review efforts on those events which appear to require review.

Subchapter 6: Certain circumstances, such as Federal Bankruptcy, State Court Receiverships and the sale of incompetents' estates, require that the interest a person has in a liquor license may devolve upon another person by operation of law. The petition and review procedure set forth in this subchapter ensures that the fiduciary appointed to operate or sell the liquor licensed business is qualified. Last year, 26 licenses were so extended. The process does not require a fee, yet the issuing authority is able to review the basic qualifications of a trustee, receiver, etc. Furthermore, the identity and ability of the person legally entitled to operate the license is known. All of the above provisions result in a beneficial social impact by allowing for the appropriate review and decision making by the Division and local authorities.

Subchapter 7: The control of the disposition of liquor licenses and the proper qualification of persons who will exercise the interest in a license comprise the fundamental principles of alcoholic beverage regulation. This subchapter requires that the issuing authority must be advised whenever someone other than the recorded licensee seeks to exercise the license privileges. The readoption of this subchapter with amendments will continue to provide a stable procedure governing the transfer of licenses. Last year, over 600 licenses were transferred and over 100 corporate structure changes were reported. Current regulations require issuing authorities to investigate applicants for licenses and the licensed premises to ensure both are qualified, as required by law. A proposed amendment provides guidance to issuing authorities in carrying out their investigative duties. The provision is illustrative and imposes no required additional duties upon municipalities.

The rules notice all interested parties as to how to apply, the information required and fee to be paid, the required notice to the public and the right of all parties to hearings on issues discovered as a result of the investigation relating to the transfer of a license, either person-to-person or place-to-place, or both. With respect to transfers of licenses, a review of the implementing statutory provision revealed an area ripe for misunderstanding. The statute (N.J.S.A. 33:1-26) requires that a transfer application must be filed whenever ". . . the license (is) sought to be transferred . . . to a different place of business. . . ." Division regulations already require such transfer applications when a licensee wishes to expand its business, and the proposed amendment clarifies that transfer applications must also be filed when a licensee wishes to reduce its licensed premises. Such application will enable the issuing authority to determine whether the proposed restriction of the licensed business is in the public interest. Clearly the public interest is served by the readoption of these rules which provide guidance for the issuing authorities and applicants for the orderly and appropriate transfer of licenses.

Subchapter 8: There are over 1,200 club licenses issued in the State of New Jersey at this time. The community based nature of these organizations and the benefits they offer in civic, charitable, fraternal, religious and other activities provide a positive social impact on the community. The rules proposed for readoption with amendments will enhance the ability of a bona fide club to achieve its purposes. The amendments which mandate that a club is controlled by its members and that at least the minimum of 60 required members are of legal drinking age. An amendment is proposed to provide a mechanism to ensure the officers and directors of the club are made aware of their legal responsibilities and the restrictive nature of a club license. These amendments will result in a positive social impact for the club, its members and the surrounding community.

Subchapter 9: The repeal of this subchapter does not remove the need for a warehouse receipt license to engage in the sale of receipts, certificates, contracts or other documents given upon the storage of alcoholic beverages, since pertinent law, N.J.S.A. 33:1-72, requires that such a license be held prior to engaging in such activity. As previously noted, in the last 10 years, few such licenses have been issued. There is expected to be no social impact from the repeal of this subchapter.

Subchapter 10: The readoption of and amendments to this subchapter will have a positive social impact by consolidating and simplifying rules which are applicable to both plenary and farm wineries located in New Jersey. All appropriate rules necessary for the proper supervision of the industry are proposed for integration in subchapter 10. Subchapter 10 will be the sole rules governing the nine current plenary wineries and six present farm wineries, and will provide concise direction for these licensees. This, in turn, should continue to enhance wine production and the tourist industry in those areas of the State where plenary and farm wineries are established. Amendments are proposed to reflect changes made to law. One of the legislative changes now permits wineries to have up to five additional retail outlets, which can be located within premises of other businesses, and the wineries can now also sell for consumption on as well as off the premises. In light of this significant expansion in the number and type of sales outlets, an amendment is proposed to require wineries to describe how they will demarcate the licensed premises from the unlicensed premises as well as how they will control the consumption of wine.

Subchapter 11: The repeal of this subchapter will not detract from a positive social impact that results from the regulation of farm wineries in New Jersey. All appropriate rules necessary for the proper supervision of the industry are proposed as amendments to subchapter 10. Subchapter 10 will be the sole rule addressing farm wineries and will provide concise direction for licensees.

Subchapter 12: The proposed readoption of this subchapter with amendments will continue regulations, in accordance with legislative policy, by continuing the required licensure of individuals involved in the personal manufacture of wine and malt alcoholic beverages for personal or household use or consumption. Last year, over 150 such permits were issued. A positive social impact is realized by authorizing private citizens to engage in the manufacture of wine and malt alcoholic beverages for personal or household use or consumption. The proposed amendment to allow permittees to manufacture limited quantities in defined non-commercial premises reflects a recognition of this new form of "home" manufacture of alcoholic beverages. Given the licensure requirements imposed upon such non-commercial premises and the restrictions prescribed upon the owner and employees of the premises, no adverse social impact is expected from these amendments.

Subchapter 13: This subchapter, proposed for readoption with amendments, provides a means to ensure the basic integrity of the industry by requiring information, which relates to State licensed suppliers, wholesalers and transporters of alcohol, to be kept regarding persons who are employed by such licensees or by persons who are connected in any business capacity with such licensees. Modern commercial reality discloses that non-resident bankers

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and creditors should no longer be exempted from disclosure and thus this amendment is proposed. There is a beneficial social impact in identifying and obtaining disclosure of relevant information from all persons who are employed by or have a business connection with a State issued license.

Subchapter 14: There is a positive social impact realized by the proposed readoption of this subchapter, which sets forth the parameters regarding the employment, or connection with the alcoholic beverage business, by persons unable to qualify by reason of age or conviction of a crime of moral turpitude N.J.S.A. 33:1-26.

The proper regulation and oversight of minors, who are employed by or connected with a licensed business is clearly in the public interest and in accordance with policies governing employment of minors. Last year over 500 permits were issued to minors. The Division's readoption of this subchapter reflects the commitment to assure that minors are supervised and their activities appropriately restricted with respect to alcoholic beverages.

The regulation of persons criminally disqualified from employment or connection with an alcoholic beverage license also serves a positive social purpose as it allows those rehabilitated persons, after satisfying appropriate criteria, to be employed after the issuance of a permit by the Director. Last year, 42 persons applied for such permits. Amendments are proposed to expand the privileges of holders of Limited Rehabilitation Permits, to allow for the sale and service of alcoholic beverages, where appropriate, as well as to articulate standards which the Director will utilize in determining whether to revoke or suspend a permit or temporary work letter issued under this subchapter.

Subchapter 15: The proposed readoption with amendments of this subchapter confirms the legislative intent of N.J.S.A. 33:1-3.1(b)(5), 25 and 26 to ensure the basic integrity of the alcoholic beverage industry, by preventing persons disqualified, by criminal convictions, from owning alcoholic beverage licensees or being employed in the industry. A substantive amendment is proposed to prevent, where appropriate, the re-application for a set period of time not to exceed five years, by a person whose disqualification removal application was denied. This provision recognizes that one of the provisions of law is that applicants must have conducted themselves in a law abiding fashion for at least five years and that their association with the alcoholic beverage industry will not be contrary to the public interest. Last year, 20 persons applied for disqualification removals. The denial of a disqualification removal implicitly contains a finding that such applicants have not satisfied those standards and for purposes of efficiency, they should be prohibited from re-applying for a determined period of time until they could arguably meet that standard. There is a positive social impact realized by the disqualification of such persons as well as providing for their ability to remove their disqualifications pursuant to appropriate procedures and criteria.

Subchapter 16: Solicitor's permits are required on a yearly basis if an individual seeks to offer for sale or solicit an order for alcoholic beverages in this State. Last year the Division issued over 1,900 such permits. A permit is not required for retail licensees and their employees. This subchapter, proposed for readoption with amendment, serves a positive social purpose in that it allows the State to regulate a significant aspect of the industry, that is, all persons involved in the sale and solicitation of alcoholic beverages. The disclosure of financial records is a valuable tool to ensure compliance with Division trade practice, marketing, advertising and price regulations. An amendment is proposed to ensure all solicitors are aware of relevant provisions of law and that they agree not to violate that law in the future. A positive social impact results when the Division takes appropriate action to ensure that all persons involved in the sale and solicitation of alcoholic beverages are legally qualified to engage in this employment.

Subchapter 17: This subchapter is proposed without substantive amendment and continues the uniform procedure in matters involving the appellate review, by the Director, of the decisions of local issuing authorities. This subchapter confirms the rights of affected persons to appeal decisions adverse to their interests, resulting in a beneficial social impact for licensees, citizens and taxpayers to exercise their rights and opportunity to have an independent review of a decision at the local level. Last year 118 such appeals were filed. The procedures for appeal acknowledge and implement the statutory provisions of the Alcoholic Beverage Control Act and the Administrative Procedure Act.

Subchapter 18: The readoption of this subchapter, with amendments, sets forth the procedure and remedies available when discrimination has occurred in the sale of any nationally advertised brand of alcoholic beverage, other than malt alcoholic beverages. The Division generally receives no more than one or two such petitions each year. Amendments are proposed to reflect a filing fee imposed by recent law as well as a requirement for petitioner seeking relief to identify the products at issue with relevant information including the products' brand registration numbers. This regulation results in a positive social impact by enhancing the stability of the alcoholic beverage industry, the employment of members of the industry and ensuring the availability of product to consumers.

Subchapter 19: The proposed readoption of this subchapter with amendment sets forth the parameters upon which disciplinary proceedings can be brought and impact upon licensees and permittees charged with violations of pertinent law or regulation. This subchapter reveals that disciplinary proceedings can involve activity which might have occurred during terms prior to renewal and can have consequences which extend beyond the final administrative adjudication as it relates to the license, the owner of the license and licensed premises. By properly sanctioning persons who were engaged in activity contrary to the alcoholic beverage law there is a positive social benefit for the industry and public at large. The knowledge that improper conduct of licensees or permittees will result in appropriate punishment is of significant interest both to the public at large and the law abiding members of the industry. All State and municipally issued liquor licenses are subject to this regulation which also provides that appropriate sanctions cannot be avoided by changes in the license entity, location of the licensed premises, or by an extension or renewal of a license. This rule enables the Division to enforce the legislative intent expressed in the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State.

Subchapter 20: The regulation of the transportation of alcoholic beverages is in accordance with the provisions of Title 33 mandating the strict control of all alcoholic beverage activity in the State. The licensing of vehicles results in a positive social impact by reducing the incidents of unlawful diversion of alcoholic beverage products in the State. This control results in a safeguard against the loss of tax revenue and also authorizes the State to qualify those individuals who engage in the transportation of alcoholic beverages. Last year the Division issued over 12,000 transit insignias. Proposed amendments provide for an affirmative defense to licensees who, for emergency reasons, must make a delivery in a non properly permitted vehicle. Additional amendments are proposed to increase relevant controls concerning the proper transportation and delivery of alcoholic beverages. A positive social impact occurs from ensuring that alcoholic beverages are delivered to persons of legal age, and the failure to do so will result in disciplinary action.

Subchapter 21: The regulation of the transportation of alcoholic beverage enables the Division to monitor compliance with law and regulations aimed at the maintenance of orderly and verifiable transportation of alcoholic beverages. As with subchapter 20, the identification of persons - in this case those who do not possess an annual State issued license to transport alcohol - achieves the objectives of deterring unlawful diversion of product, protecting against loss of tax revenues and allowing the law enforcement community and the Division to assess and take appropriate action when required by the New Jersey Alcoholic Beverage Control Act. A positive social impact is realized by the regulation of the transportation of alcoholic beverages for personal and commercial purposes into, through or out of the State.

Subchapter 22: The establishment of an educational training program for the over 1,900 holders of plenary and limited retail distribution licenses has a positive social impact in many areas. The subject licensees have been trained and made aware of the requirements attendant to the proper conduct of their business. By requiring licensees to successfully complete the training program, which includes information on laws, regulations, policy and administrative determinations of the Director of the Division of Alcoholic Beverage Control, the public will be well served because the activities of licensees will more likely be in conformity with applicable law. Training regarding improper conduct such as sales to minors will not only benefit the public at large but also the law enforcement community from the enhanced ability of licensees to comply with pertinent laws and regulations regarding the sale of alcoholic beverages. The Division's experience over the past year with the training program has resulted in the proposal of several technical amendments to ensure that proper persons are trained. Provision is also made to provide deferments beyond a six month period in appropriate cases as well as to impose sanctions on those who make false or misleading statements in attempting to improperly obtain deferments. The initial training program has been successfully completed by approximately 80 percent of the 2,000 subject licensees (package store owners) and continued educational efforts will be made to ensure all owners of package store licenses are adequately trained to exercise their privileges in a responsible and lawful manner.

Subchapter 23: There are approximately 12,000 licensees privileged to manufacture, distribute or sell at alcoholic beverages in the State of New Jersey. The need for strict, comprehensive and impartial regulation of these licensees is an articulated objective of the New Jersey Alcoholic Beverage

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Control Act. These rules form guidelines and a framework for all licensees to conduct their licensed business. The failure to comply with the various statutory and public policy objectives advanced by these regulations would directly impact not only the regulated industry itself but clearly upon all of the citizens of the State of New Jersey as well as the substantial number of visitors who enter this State for business, social and recreational purposes.

The vast majority of these rules have been in existence in one form or another for over 40 years; some have been in effect since immediately after the adoption of the Alcoholic Beverage Control Act in 1933. The regulated industry is clearly aware of these rules and the Division has constantly assessed their efficacy and importance on a day-to-day basis through citizen contact, comments from State, county and municipal law enforcement officials and elected officials, and in the day-to-day evaluation of disciplinary infractions ascertained by State inspectors assigned to such activity.

These rules seek to balance the competing objectives of the Alcoholic Beverage Control Act as set forth in N.J.S.A. 33:1-3. Where it is deemed to be ineffectual to achieve the objective sought or where the objective sought is deemed to be unnecessary due to statutory, judicial or policy changes, the regulation will be modified. The proposed amendments to N.J.A.C. 13:2-23.16 codify the Division's long standing policies of prohibiting the offering of an alcoholic beverage as a prize, gift or award, and the offering of any alcoholic beverage promotion to a person under the legal age to purchase or consume alcoholic beverages. These proposed amendments liberalize and extend certain exemptions based upon the Division's experience, but they still advance the Division's mandate to foster responsibility and moderation in the consumption and use of alcoholic beverages, especially by discouraging underage drinking and dissuading over-consumption of alcoholic beverages on on-premise consumption licensed premises. Since the last readoption in 1990, the review of these rules has revealed that there is no need for any other substantive, major changes or repeals since the objectives sought by regulation are being met.

Subchapter 24: This subchapter provides a positive social impact by regulating the supplier and wholesaler distribution and marketing system for alcoholic beverages in this State. The rules affect all retail, wholesale or producer licensees in the State as well as non-licensed foreign suppliers that do business within the State. The primary objectives of this subchapter are to provide a framework of regulations which will prevent pricing and marketing practices which are discriminatory and which would result in an unstable market place. Proposed amendments requiring some additional information such as brand registration numbers and requiring per unit costs advance "truth in advertising" concerns. The proposed amendments to relax restrictions on contributions to bona fide charitable organizations, expanding the ability of licensees to offer promotions, rebates and offering combination packages will benefit not only the consumers but members of the industry. At the same time, these amendments will not undermine the State's policy of fostering moderation in the consumption of alcohol.

Subchapter 25: The proposed readoption of this subchapter without amendment, which regulates the inventory and distribution of alcoholic beverage product, serves the purpose of preventing the diversion of alcoholic beverages and assures the proper collection of taxes. The positive social impact that results from this rule consists of stability of the industry, interbrand competition and protection of the alcoholic beverage tax base in accordance with N.J.S.A. 33:1-2.

Subchapter 26: The proposed readoption of this subchapter with amendments will continue the policy of the Division, in accordance with law, to improve the competitive position of retailers in relation to chain store operations. Currently, there are 347 cooperatives in active operation. These rules allow retail licensees to join in a purchasing cooperative which enables an individual retailer to obtain favorable wholesale quantity discounts by joining with other retailers. This ability benefits the individual retailers and the consumers in the State as it provides a broader range of products at competitive prices. Proposed amendments to this subchapter will also have a positive social impact as cooperatives will be able to hire employees to manage the cooperative and to maintain a public warehouse for storage of inventory. All of these amendments will result in a more efficient cooperative benefiting the individual members and the consuming public.

Subchapter 27: The proposed readoption of this subchapter, with amendments, continues the required control of labeling containers of alcoholic beverages which are sold in this State. Proper labeling is vital to the public interest and has a positive social impact on society.

The readoption of N.J.A.C. 13:2-27.1 will continue the adherence to Federal requirements regarding labeling and standards of fill. The use of the Federal standards continues the uniformity of labeling and the standards of fill guidelines, since the Federal Government supervises this activity for all alcoholic beverage products produced domestically for interstate commerce as well as those that are imported. The adoption of those standards by New Jersey ensures that products sold intrastate are also in conformance with appropriate regulatory controls.

The proposed readoption, with amendments, of N.J.A.C. 13:2-27.2 will continue the position taken by this Division to prevent and reduce the likelihood of transshipment of large quantities of recognized the major brands of beer. The proposed amendments recognize the commercial reality of the growing number of small beer producers who have been economically foreclosed from selling their products in New Jersey under currently existing regulations. Additionally, the complete removal of the deposit container prohibition from products other than malt alcoholic beverages, as well as from coolers made from malt alcoholic beverages, recognizes that transshipping of those products has never been a major problem in this State.

A review of this section as part of this readoption proposal revealed that it was originally passed in 1984 to combat the problems cause by transshipment of malt alcoholic beverages (specifically beer). Since 1984, the category of "malt" alcoholic beverages has been vastly expanded to include products other than beer, namely malt cooler products. These products were not considered to be part of the identified problem in 1984 and the Division has received comments from the industry and citizens requesting a review of both the transshipping problem and solutions utilized to the address the problem.

Although the stated problem in 1984 was with transshipment of "malt" alcoholic beverage containers (16 N.J.R. 31-32), the regulation as promulgated in 1984, and readopted in 1990, went beyond that identified problem and was applied to "any" alcoholic beverage product. A more complete and detailed discussion of the identification of the problem which the existing subsection was adopted to address and the impact and consequences of this subsection is contained in the Summary above. That information is adopted by reference herein.

As a result, the current rule, as proposed, will allow alcoholic beverage products, other than certain malt alcoholic beverages, to be sold in New Jersey in containers whose labels are marked for deposit in another state. As proposed, only malt alcoholic beverages, with the exception of malt cooler products, may not be sold in New Jersey in containers whose labels are marked for deposit in another state. In order to open the New Jersey market to small breweries and "micro brews," an exception has been provided so that a brewer or brand registrant who does not ship in excess of 3,000 barrels of 31 fluid gallons or its container equivalent into New Jersey in the calendar year will be exempted from the regulatory prohibition against deposit marked containers. While this proposal will have the effect of giving the New Jersey consumer greater selection and choice, it will not undercut the concerns with transshipment. The regulation will still apply to the major products produced by those brewers who control more than 98 percent of the market share in the State of New Jersey while exempting the vast majority of remaining brewers who control less than two percent of the market share. Many of these brewers currently do not make their products available for sale in New Jersey because of the current prohibition against deposit market containers and the attendant costs to produce separate labels for sale in State.

This proposed amendment will have some effect on the nearly 500 State supplier, wholesaler and transportation licensees and over 10,000 retail licensees in this State as well as the citizens of New Jersey. It is anticipated that additional product choices will be available since licensees will have access to new products which can now be shipped into New Jersey because of the relaxation of this prohibition. Since transshipping affected only the most popular and major selling brands of malt alcoholic beverages, and they will still be subject to the prohibition of being sold in deposit marked containers, no adverse impact is expected on licensees in this State. Nevertheless, since the Division has received over 800 written requests to retain the regulation in its present form, some resistance to this change, perhaps from current beer wholesalers and their employees, can be expected. The social conditions which precipitated this rule and the changes therein were discussed in the summary above.

Subchapter 28: The proposed repeal of this subchapter will have no adverse social impact as the pertinent statute, N.J.S.A. 33:1-88, protects the interest of consumers from misleading labeling of wine which has been transferred from its original container to an interim container. The current industry procedures utilized to transfer wine from original containers to interim containers for ultimate consumption by patrons has been determined to not violate statutory bottling and labeling requirements.

Subchapter 29: This subchapter confirms and implements the public policy of this State to make public records accessible for examination by citizens with certain exceptions for the protection of the public. The proposed amendment to permit maintaining of employee lists in computer recognizes

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modern automated informational systems. Access to licensure, adjudicative and other records affords citizens the opportunity to access information in accordance with the public policy to make public records accessible.

Subchapter 30: The purpose of the promulgation of this subchapter, at the period of time shortly after Prohibition, was to remove from the alcoholic beverage industry the bootleggers, racketeers and other criminal elements engaged in the illegal manufacture of alcoholic beverages. The registration of stills and distilling apparatus enables the Division to ensure that only qualified holders of manufacturing licenses would possess and operate distilling apparatus. Although there is limited registration of stills and few requests for sale and removal of same, the rules still provide a deterrent and an enforcement tool to ensure that the means to manufacture alcoholic beverages are exercised by only entities or persons duly qualified.

Subchapter 31: The rules proposed for readoption, with amendment, in this subchapter provides notice to persons engaging in unlawful alcoholic beverage activity that the beverages and other property utilized in connection with that activity will be seized and forfeited. The illegal activity deprives the State of lawful tax revenue, unfairly competes with properly licensed individuals and operates outside the statutory scheme to achieve the legislative objectives to prevent the social and economic consequences of alcoholic abuse and illegal activity. The proposed amendment merely references applicable law for purposes of selling forfeited property.

Subchapter 32: The proposed repeal of this subchapter, which sets forth the procedures for the sale of forfeited property, will have no social impact. The Director still retains authority pursuant to N.J.S.A. 33:1-66 to take all appropriate action with respect to the seizure of property utilized in illegal alcoholic beverage activity. The procedures for the sale of forfeited property are presently under the jurisdiction of the Division of Purchase and Property pursuant to N.J.S.A. 52:27B-68. The Division of Alcoholic Beverage Control can transfer any forfeited property to the Division of Purchase and Property for their use and disposal, which may include auction, in accordance with law.

Subchapter 33: The proposed readoption of this subchapter will continue the regulatory oversight, mandated by pertinent law, over the importing of alcoholic beverages into the State. The filing of brand registration information enables the Division to provide for the orderly marketing of alcoholic beverages as well as establishes a capability to assess and collect taxes imposed by the State on alcoholic beverages collected at the wholesale level. A positive social impact is realized by these filings as they identify products, stabilize the industry as appropriate and protect the tax base of an alcoholic beverage industry that has adequate brand and price competition.

Subchapter 34: The proposed new rule implement legislation enacted in 1993 which authorizes holders of a plenary retail consumption license, operated in conjunction with a restaurant, to brew malt alcoholic beverages on immediately adjacent licensed premises and offer the product for sale on the restaurant's premises. A positive social impact results from authorizing restricted breweries as there is a growing market for freshly brewed beer with unique characteristics. The rules recognize an exception created by the law which will allow the makers of the alcoholic product to also sell directly to the public. The rules should ensure that the intent of the Legislature will be carried out in an efficient manner to allow the restricted brewery licensee to offer its malt alcoholic beverages to its customers with the requisite concern for the public health and safety.

Subchapter 35: The proposed readoption with amendments (consisting of definitions) continues the policy of the Division, in accordance with law, to limit package good sales by consumption licensees to specific areas in the principal barroom when the license does not possess the "Broad package privilege." There are currently over 6,300 consumption licenses (plus another 170 consumption licenses issued to hotels or motels) without the broad package privilege. In contrast, less than 600 current consumption licenses have the Broad package privilege. Proposed amendments merely clarify the meaning of terminology utilized in this regulation. The definitions provide additional information and certainty to licensees without the Broad package privilege who wish to engage in package goods sales.

Subchapter 36: The proposed readoption of this subchapter will continue the policy of the Division to respond to bona fide inquiries from licensees and the public who are seeking advice as to the propriety of anticipated alcoholic beverage activity. The issuance of advisory opinions fosters a greater awareness of the law, regulations and policies concerning alcoholic beverage activity and it serves a positive social purpose by deterring potential unlawful conduct and by providing licensees and citizens with an opportunity to obtain information regarding practices in the alcoholic beverage industry.

Subchapter 37: This proposed new subchapter will have a positive social impact as it will allow the public to attend events at premises of licensees and permittees who exercise the on-premise privilege and who will hold alcoholic beverage consumer tastings. The rules provide that the tastings must be conducted in accordance with the restrictions contained in this proposed subchapter. This new proposed rules will also serve a positive social purpose by encouraging educational and instructional discussions on alcoholic beverages such as wines which focus on appreciation and moderation rather than over-consumption of alcoholic beverages.

Subchapter 38: The proposed readoption of this subchapter, with amendments, clarifies the permissible and prohibited hours of sale of package goods. It serves a positive social purpose by setting forth a uniform, socially acceptable time for the sale of package goods. This regulation helps to limit the off premises consumption of alcoholic beverages. It additionally limits indiscriminate drinking on public streets during late hours or early hours of the morning.

Subchapter 39: This proposed readoption continues the manner in which alcoholic beverages are returned by retailers to suppliers. These rules do not have a significant social impact.

Subchapter 40: This proposed readoption will continue the issuance procedure allowing persons of lawful age to acquire an identification card to be used to verify age and which a retail licensee can reply upon to offer alcoholic beverages for sale and consumption in accordance with law. A positive social impact is realized when thousands of citizens are able to present the identification cards to retail licensees, which can be utilized to determine whether to serve alcoholic beverages to the holder. There is always a concern about the potential fraudulent or counterfeit issuance or alteration of identification cards. The amendment to this subchapter prohibiting the use of duplicate driver's licenses from any state as proof of age or identity should enhance the reliability of the identification card in furtherance of efforts to eliminate alcoholic beverage sale and consumption by underage person.

Subchapter 41: This is a proposed new subchapter which is a result of the determination of the legislature to provide for the issuance of special consumption licenses to non-profit corporations which conduct theatrical and musical performances on premises which seat 1,000 or more persons. Only three such licenses have been issued to date. Because of the restrictive nature of the statutory privilege, consumption can only occur on the premises during the performances and for two hours before and for two hours afterwards. Given the limited nature of the license and that only three have been issued and few if any other premises will meet the qualifications, there will be little impact on the public. This license does allow attending patrons to experience an enhanced theatrical event, however, and thus whatever impact occurs will be of a positive nature upon society.

Appendix: The repeal of the outdated and unnecessary chapter Appendix will have no social impact.

Economic Impact

Subchapter 1: This subchapter contains requirements upon licensees that the Division has administered regarding notice, hearing and the decision making process, for over 50 years. The provisions proposed for readoption with amendment impose no substantial economic impact upon the applicants for a State license or permit (and no impact on the public at large) and are necessary and proper for the supervision of the alcoholic beverage industry. There would be costs to an applicant and the Division if a hearing is held before the Director. An applicant would incur additional costs if a hearing is held and legal counsel is retained by applicant.

Subchapter 2: Municipal issuing authorities, the Division and the licensees have been involved with the administration of this subchapter regarding notice, hearing and the decision making concerning the issuance of a municipal license for over 50 years. The readoption with amendment (fee increase from $50.00 to $100.00 per statute) does not result in any substantial economic impact on the licensees. There would be costs to an applicant if a hearing is required to be held before the municipal issuing authority and many applicants incur additional costs if legal counsel is retained to present the matter.

Subchapter 3: There is no economic impact created by continuing with rules that have been in effect for years and which require a local issuing authority to maintain records concerning license activity and transmit that information to the Division in a timely manner. The Division and the local issuing authority receive fees from licensees to off-set the expense in complying with a necessary rule which establishes an accurate base of licensing information.

Subchapter 4: The proposed readoption with amendments has no significant economic impact upon license applicants and the Division. The Division utilizes existing resources and personnel to process and conduct investigation of a limited number of applications involving members of a municipal issuing authority possessing an interest in a license in their

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community. There would be costs to an applicant if a hearing is held before the Director, and many applicants would incur additional costs if legal counsel is retained.

Subchapter 5: The procedures set forth in this subchapter for the issuance of special permits generates revenue for the State as well as for the permit holders that conduct the events where the alcoholic beverage activity is authorized by permit. (The maximum fee was increased by statute.) his subchapter not only creates this positive economic impact but its provisions also ensure that only qualified persons or entities obtain a particular permit with advanced notice to the public and local governing officials.

Subchapter 6: The requirements of this subchapter result in minimal economic impact upon the industry, the regulators and the public at large. The procedure required to process the extension of a license seeks to minimize any economic impact. The expense to the issuing authority in processing an extension request is minimal and there are no fees required for the formal license extension.

Subchapter 7: Pertinent law requires fees when license transfer applications are filed with an issuing authority. A licensee must submit either 10 or 20 percent of the full annual fee in addition to a $100.00 State fee. (The increase in State fee from $50.00 to $100.00 was required by legislation.) These non-refundable fees defray the costs attendant to the processing, investigating and decision making required to determine the propriety of a transfer of a license. There is also a positive economic impact for the industry and issuing authorities by providing an efficient and orderly procedure for the review of transfer applications.

Subchapter 8: The proposed readoption of this subchapter, with amendments, does have a modest economic impact upon those entities applying for, receiving and renewing club licenses. There are administrative costs with respect to the required filing of an application and there is a license fee prescribed by statute which ranges from $50.00 to $150.00, N.J.S.A. 33:1-12(5). Club licensees are required to maintain books of account as well as records of events conducted on the club's licensed premises pursuant to a Social Affair permit. A club licensee, as any other retail licensee, is also subject to pertinent municipal regulations or referenda regarding the hours of sale. Currently, there are over 1,200 club licenses issued in this State. Club licensees must also follow other regulatory provisions applicable to other retail licenses. Absent those clear, uniform procedures for eligibility for licensure and limitations on alcoholic beverage activities, significant increased State and municipal enforcement and investigative resources would be required to ensure compliance with the provisions and intent of the Alcoholic Beverage Control Act.

Subchapter 9: The repeal of this subchapter will have no economic impact upon the industry, the regulators or the public at large. N.J.S.A. 33:1-72 maintains the requirement for a warehouse receipts license to engage in the sale of receipts, certificates, etc. given upon the storage of alcoholic beverages and therefore the repeal of the regulation is appropriate.

Subchapter 10: The regulatory provisions in subchapter 10, along with the proposed amendments, have no intrinsic economic impact. The fees for and privileges of licensure are statutorily established. The application process is similar to that required of all other State issued license applicants. The anticipated economic benefits sought by encouraging a viable, healthy and stable wine making industry in this State would also boost the State's agricultural production and increase the tourist industry in those areas of the State where wineries are established.

A structured, uniform application and processing procedure, along with the recitation of certain new legislative provisions, should reduce expenses both of this Division and the regulated industry in conforming to the new standards and concepts. Additionally, the expansion of licensed privileges should have a positive impact upon New Jersey's plenary and farm winery industry.

Subchapter 11: The proposed repeal of this subchapter will not result in any economic impact upon the industry, the consuming public or the State of New Jersey. The pertinent provisions of these rules, which regulate farm winery licenses and their retail privileges, are proposed as amendments to subchapter 10.

Subchapter 12: The proposed readoption of this subchapter with amendments will have a modest economic impact upon applicants for the special permits to brew malt alcoholic beverages and wine for personal or household use or consumption. The fee is increased from $3.00 to $10.00, which will assist the Division in defraying the expense of processing applications and issuing permits. This increase reflects the rising costs in the processing of permit requests since the $31.00 fee was imposed by the original rule promulgation.

The proposed amendments to this subchapter authorize a permittee to utilize the space, equipment, ingredients, bottling supplies, advice and expertise of the proprietor of non-commercial premises for the production of the permittee's malt alcoholic beverage or wine. This amendment is in response to inquiries from citizens interested in "home brewing" who do not have the expertise, equipment, or space to engage in this activity. Furthermore, persons having the capability to offer these services have also requested the position of the Division concerning this proposed activity. A review of the pertinent law, N.J.S.A. 33:1-75, has led the Division to conclude that the legislation was enacted to allow the manufacture of the alcoholic beverages for personal use and consumption, while recognizing the prohibition against commercial profit from the use and sale of the wine and malt alcoholic beverages.

Subchapter 13: The proposed readoption of this rule with amendments, which requires questionnaires to be completed by employees and holders of State licenses, does not create any economic impact on any segment of the industry or upon the Division. There is no fee involved with the completion of the required questionnaire.

Subchapter 14: There is a minimal economic impact upon the applicants for permits which will allow persons to be employed in the alcoholic beverage business. The $10.00 fee for a Minor's Permit and $100.00 fee (increased by legislation) for a Rehabilitation Employment Permit are modest when the result is the gainful employment of minors and those persons which have been criminally disqualified from employment in the alcoholic beverage industry. It is the experience of the Division that the employers/licensees also receive a beneficial economic impact by the employment of these persons, subject to appropriate regulations.

Subchapter 15: This subchapter has minimal, if any, economic impact on the industry or revenue of the State. The fee of $100.00 (increased by legislation) helps to defray the expense of processing the approximately 20 to 30 petitions filed annually by persons seeking removal of their disqualification from being involved in the alcoholic beverage industry. A successful petition proceedings results in the person being able to have an interest in a liquor license or be employed in the industry by a licensee without need for further permits.

Subchapter 16: The proposed readoption of this subchapter requires persons who wish to obtain solicitor's permits to pay a fee of either $15.00 or $25.00 dependent upon the type of permit. This fee does not have a significant economic impact on the industry and it results in all persons having such permits possessing the same rights and obligations, which maintains a stable market place where they compete on a fair and equal basis. The Division incurs certain administrative expenses in issuing permits, investigating applicants and maintaining files but the goal of preventing unfair competition, by persons not licensed, is well served by the Division's activities.

Subchapter 17: There is a modest economic impact upon those parties appealing the decisions of local issuing authorities to the Director. The statutory filing fee of $100.00 (recently increased by legislation) remitted to the general treasury of the State and the expenses of administration and adjudication of appeals, by the Division and the Office of Administrative Law, are paid for from general budgetary funds allocated to these agencies. This reasonable fee permits citizens to access the appellate administrative process without imposing an excessive, personal financial burden. The appeal procedures are implemented to ensure the integrity of municipal liquor license determinations and the regulations afford all interests parties to monitor alcoholic beverage activities in a community with the ability to have an independent review when deemed appropriate by an appellant.

Subchapter 18: This subchapter does not have any direct economic impact upon the Division or industry in terms of expense except for the $100.00 fee required by statute to accompany a petition and whatever costs are incurred to conduct hearings and render decisions on petition proceedings. As the Social Impact statement notes, this subchapter does have stabilizing influences on the industry and citizens of the State without having a direct impact which can be quantified.

Subchapter 19: Disciplinary proceedings, authorized by this subchapter, and instituted against a license, can result in a suspension or revocation which has an obvious negative economic impact upon a licensee. However, this impact is authorized as a statutory sanction pursuant to law for those who abuse the privilege of engaging in alcoholic beverage activity in this State. The removal, either temporarily or permanently, of licensees who violate pertinent law and regulation, ultimately results in a beneficial economic impact upon the alcoholic beverage industry.

Subchapter 20: There is a minimal economic impact upon those licensees who are involved with the transportation of alcoholic beverages into, out of, or within the State by the imposition of the fees mandated by this subchapter. The application fee of $150.00 imposed on a plenary or farm winery, the transit insignia fee of $50.00 for each insignia and the $20.00 fee for

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transportation license insignia are received by the Division and deposited in the general treasury of the State.

Subchapter 21: There is a minimal economic impact upon the applicants seeking to acquire the necessary permits for transportation of alcoholic beverages. Recently, statutory amendments increased the following fees. A Limited Transportation permit cost $400.00 and allows a permittee to transport alcoholic beverages into or out of the State for a full year. An Emergency Trip permit costs $25.00 and allows a specific delivery into or out of the State. This permit is utilized by those transporters who do not regularly transport alcoholic beverages. The $5.00 fee for a permit that allows a New Jersey resident to transport alcoholic beverages in excess of the prior statutory limits has been repealed in accordance with pertinent law. There is a $25.00 fee for the interstate transportation of alcoholic beverages for personal use in accordance with law. The fees are deposited in the general treasury of the State and designated agents receive a surcharge when issuing an Emergency Trip permit at the agent's business operation.

Subchapter 22: There is an economic impact upon the plenary and limited retail distribution licensees (package store owners) who must pay a fee for the training program established by the Director. Subchapter 22 authorizes a fee with a range of $50.00 to $150.00 per attendee. A request for a deferment of educational training requires a $25.00 processing fee. The fee and time spent in the training program are clearly off-set by the economic savings a licensee should gain by eliminating potential penalties for future violations as the licensee is trained and becomes more familiar with the requirements of law in the operation of plenary or limited retail distribution license.

There is a direct economic impact upon the Division for expenses that include the scheduling, notice and promotional expenses, site expenses, instructional expenses and other related costs. However, the training requirements imposed upon the subject licensees can reasonably be anticipated to result in a reduction of violations and more efficient compliance, by the licensees, with pertinent statutory and regulatory provisions. A positive economic benefit should also result from training that fosters responsible and prudent alcoholic beverage activity by licensees. The training emphasis on the sale of alcoholic beverages should reduce such unlawful conduct with the resultant lessening of the negative economic consequences of underage drinking (that is, litigation, criminal justice issues, and health costs).

Subchapter 23: The provisions of subchapter 23 do not have any intrinsic economic impact. These rules, as the title indicates, are intended to govern the conduct of the holder of a alcoholic beverage license and the activities which occur on the licensed premises. These rules seek to insure the integrity of the alcoholic beverage industry. The actions required to comply with these rules do not, in and of themselves, impose any financial burdens or obligation upon the regulated industry or the citizens of the State of New Jersey who avail themselves of the many services that are provided to licensees of this State in conducting their various businesses. The economic impact upon the Division of Alcoholic Beverage Control and its enforcement arm, the ABC Enforcement Unit of the Division of State Police, will not be changed by the readoption of these regulations. The staff of the Statewide investigative force which reviews the activity of alcoholic beverage licensees and the conduct of their licensed businesses, as well as Division personnel which monitor certain regulations, will continue as in the past. Similarly, local law enforcement officials who review activities at licensed premises in their communities will continue to do so without any enhanced economic impact because of the readoption of these rules. Absent the existence of these rules and the sanctions of suspension or revocation of a license for breach thereof, an anticipated economic impact to all law enforcement agencies and the citizens of New Jersey would be substantial and pervasive throughout the State. Unlawful activities would create negative economic impacts. This risk is unnecessary because the readoption of these rules represents the needed control and enforcement remedy to ensure, as best as possible, a uniform and strict compliance with the standards set forth in subchapter 23.

The proposed amendments to N.J.A.C. 13:2-23.16 will have a positive economic impact on the alcoholic beverage industry and the public. The proposed amendment permit licensees that exercise the off-premise sales privilege to offer mixed case discounts. Another proposed amendment permits manufacturers, suppliers or wholesalers to offer on-pack or in-pack promotional gift items, as well as entry to contests, sweepstakes or merchandise purchase offers. These proposed amendments will allow industry members to effectively complete with their counterparts in neighboring states which already permit such promotions.

Subchapter 24: The rules proposed for readoption in this subchapter result in a significant economic impact on the alcoholic beverage industry and consumers. The rules set forth the pricing and marketing practices of licensees and out-of-State suppliers. The readoption of these rules will continue the policy of the Division, in accordance with law, to ensure fair competition between licensees and competitive pricing for consumers. Proposed amendments should result in economic benefits for both licensees and consumers by expanding the ability of licensees to offer rebates, coupons and combination packages.

Subchapter 25: The restrictions set forth in this subchapter, requiring appropriate licenses for the warehousing and distribution of certain alcoholic beverages, foster a competitive market place with the ability of the State to collect all lawful taxes on the sale of alcoholic beverage product. The Social Impact statement above concerning this subchapter is referenced herein with particular regard to the economic considerations resulting in benefits to the industry, consumers and the State of New Jersey.

Subchapter 26: The proposed readoption of this subchapter with amendments will continue to allow individual retail licensees to take advantage of quantity discount prices offered by wholesalers. The retailers who join a cooperative are able to realize a positive economic impact by having the ability to offer, to consumers, products and pricing competitive with that of other larger licensees in the industry. The proposed amendments will allow cooperatives to hire a manager and to maintain a warehouse which should further enable cooperative members and the public to receive positive economic benefits from this increased flexibility of operation.

Subchapter 27: The proposed continuation of Federal label and standards of fill (N.J.A.C. 13:2-27.1) and the readoption of N.J.A.C. 13:2-27.2 with amendments will result in no adverse economic impact on the alcoholic beverage industry. Further, it is anticipated that this amended regulation will foster the availability of new products not currently available in the New Jersey market.

N.J.A.C. 13:2-27.2 will continue to afford to those brewers of malt alcoholic beverages who control 98 percent of the market share in New Jersey, the protection against transshipment of their major selling products. In addition, the proposed amendments will now allow the remaining smaller brewers, who control less than two percent of the market share, the opportunity to offer their products for the first time in New Jersey. Many of these brewers had not previously offered some or all their products for sale in New Jersey because of the costs of producing separate labels. Brewers will now be able to sell all of their products in New Jersey in deposit marked containers if they do not sell more than 3,000 barrels per calendar year. The 3,000 barrel limit is based on recent legislation (N.J.S.A. 33:1-10.1c) which established "restricted breweries" in New Jersey. These restricted breweries, which are essentially "brew pubs," are authorized by law to brew up to 3,000 barrels of product per calendar year. The Director has determined that the Legislature, by this statute, has presumptively established a rational threshold limit for the shipment of product by small breweries into this State. The new amendment recognizes and furthers this legislative intent.

Further, the proposed amendments will also ensure that producers of other alcoholic beverage products and even malt cooler products, are not continued to be burdened with the label restrictions that were promulgated in 1984 to remedy a problem which existed regarding the transshipment of beer. Since cooler distribution is different from that of beer, the continued inclusion of malt coolers in the deposit marked container prohibition goes beyond the original stated purpose of the regulation.

This proposed amendment may have some affect on the nearly 500 State licensees and over 10,000 retail licensees in this State. Since transshipping affected only the most popular and major selling brands of malt alcoholic beverages, and they will still be subject to the prohibition of being sold in deposit marked containers, little adverse economic impact is expected on licensees in this State. Other than giving New Jersey consumers additional products to purchase or choose from, no other economic impact is expected on the public. Revenues from the sale of new products may result in new and additional tax revenue being generated for use in defraying the expenses of administrative agencies, although no additional expenses for such agencies are anticipated.

Subchapter 28: The proposed repeal of this subchapter will have no economic impact on the industry or consuming public. The current industry practices regarding transfer of wines from original containers to interim containers do not violate the bottling and labeling requirements of pertinent law.

Subchapter 29: The Division, in accordance with public policy to make public records accessible, has the capability to respond to requests for inspection and copying of such records. There is no significant economic impact upon the public or licensees with respect to the fees imposed for photocopying. By allowing licensees to utilize computer recordkeeping there is a reduction in operational expenses.

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Subchapter 30: The Division has had few inquiries regarding the registration of stills or distilling apparatus and Division records reveal that only one still has been registered in the last decade. Therefore, the readoption of this subchapter will not have any economic impact upon the industry or consuming public in light of the minimal activity involving stills.

Subchapter 31: This proposed readoption provides an appropriate sanction, by way of forfeiture, in addition to fines and imprisonment, for persons who engage in unlawful alcoholic beverage activity. A direct adverse economic impact is felt by those persons engaged in illegal activity when their property is seized and forfeited by the State. There is also a positive economic impact to the State when forfeited property is sold at auction. Additionally, a positive economic impact results when the State takes appropriate enforcement action against activity which deprives the State of lawful tax revenue.

Subchapter 32: The proposed repeal of this subchapter will not have any economic impact on the alcoholic beverage industry or the public. As the Division has not had a public sale of forfeited property for over 15 years and another State agency (Division of Purchase and Property) is authorized to dispose of and sell any property forfeited to the State, the Director will still retain the ability to transfer any forfeited property, for use and possible sale by appropriate State officials.

Subchapter 33: The requirement of brand registration filings does impose some economic limitations on licensees but the public purpose and benefits realized outweigh the legitimate consequences received by the licensees. The filing fees of $20.00 for initial filing and $10.00 for amendments (increased by recent legislation) are reasonable and impose a modest economic impact upon licensee. The brand registration filings result in a positive economic framework allowing the Division to take appropriate action and fulfill its obligation to ensure the orderly marketing of alcoholic beverages and the resultant collection of taxes imposed by the State.

Subchapter 34: This proposed subchapter allows a restricted brewery licensee (who also holds an active plenary retail consumption license operated in conjunction with an immediately adjacent restaurant) to brew and sell its malt alcoholic beverage product on the licensed premises. A beneficial economic impact should result from this proposed new rule as it implements legislation which authorizes a licensee to expand its offerings to the consuming public. The fee for the restricted brewery license is provided by law and is graduated from $1,000 to $2,000 according to the quantity of malt alcoholic beverage a licensee wishes to brew in any given year.

Subchapter 35: This proposed readoption with amendments, clarifying two terms utilized in the subchapter, maintains the restrictions imposed upon consumption licensees' sales for off-premises consumption when they do not hold the "Broad package privilege." If a licensee desires to sell package goods it must conform its licensed premises to satisfy the product display, shelving and barroom minimums set forth in the subchapter. The economic impact of these minimum requirements can range from a minimal expenditure to thousands of dollars.

Subchapter 36: There is no direct significant economic effect on the alcoholic beverage industry, the public or the Division by the implementation of a procedure to accept and respond to requests for advisory opinions. Adverse economic consequences can be avoided when the Division advises a requesting party that to engage in actual or potential impermissible activities will result in negative consequences in the form of appropriate penalties.

Subchapter 37: The proposed new rule allowing alcoholic beverage consumer tastings and consumer tasting dinners will have a positive economic impact on the alcoholic beverage industry and the public. The proposed new rule will assist the alcoholic beverage industry by increasing consumer awareness of existing or newly introduced alcoholic beverages such as wines or specialty malt alcoholic beverages as well as allowing industry members to effectively compete with their counterparts in neighboring states which already permit such alcoholic beverage consumer tastings.

Subchapter 38: The regulation of the hours of sale of package goods may result in some minimal adverse impact upon retail licensees. However, this minimal impact is clearly offset by the public purpose of appropriate regulation of the sale of alcoholic beverages with the resultant reduction of alcohol abuse.

Subchapter 39: This proposed readoption provides guidance, in accordance with industry practices, to an aspect of the alcoholic beverage business dealing with return of alcoholic beverages for credit. This regulation does not have a significant economic impact on the industry, the regulators or the public at large.

Subchapter 40: These rules do not have any economic impact upon the alcoholic beverage industry or the Division. An applicant for the identification card pays a fee of $6.00 which is established by law and is utilized by the county to defray the costs of issuance of the card.

Subchapter 41: This proposed subchapter implements provisions of law (N.J.S.A. 33:1-19.7). The application process is substantially similar to other retail licenses, except for the certification by the issuing authority to the Director that the licensee and premises are qualified as required by law. As a result this regulation is expected to have little direct economic impact upon any entity, except for the required filing fees paid by the three current qualified and licensed non-profit corporate entities.

Appendix: No economic impact will result from the repeal of the outdated and unnecessary Appendix.

Executive Order No. 27 Statement

The rules proposed for readoption with amendments and proposed new rules are dictated and in accordance with N.J.S.A. 33:1-1 et seq. and are not subject to any Federal requirements or standards. No Federal standards have been exceeded in this rule proposal and therefore an Executive Order No. 27 Analysis is not required.

Regulatory Flexibility Analysis

Subchapter 1: The rules in this subchapter impact upon existing State license holders having a change in the structure of corporate ownership. The rules also apply to any person or entity applying for the issuance of a State license or permit to manufacture, wholesale, warehouse, transport or bottle alcoholic beverages. Approximately 80 to 90 percent of the entities could be classified as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are requirements to complete the State application with payment of statutorily established fee which ranges from $50.00 to $10,000. A notice of change in corporate structure must be published in appropriate newspapers. The cost for publication varies according to the fee charged by the newspaper. No professional services are necessary to complete an application although certain entities hire same as a matter of business practice. There is no distinction made for small businesses as the requirements imposed are considered the minimum necessary to effectuate the pertinent law.

Subchapter 2: The rules in this subchapter apply to any person or entity submitting an application for the issuance of a license by a municipality to sell alcoholic beverages at retail to consumers or club members and their bona fide guests. There are approximately 10,000 persons or entities that could be required to follow the requirements of this subchapter. The requirements imposed are considered the minimum necessary to effectuate the legal requirements necessary for application, payment of fees and advertisement. Approximately 90 percent of the affected entities would be classified as a small business under the Regulatory Flexibility Act.

This subchapter requires completion of a State prescribed form with payment of statutorily established fees ranging from $50.00 to $2,000 and a cost for publication of notices in newspapers. No professional services are necessary to complete the application, although affected entities may hire same as a matter of choice. No other reporting, recordkeeping or other compliance requirements are imposed.

Subchapter 3: There is no flexibility analysis required pursuant to the Regulatory Flexibility Act as the impact of this subchapter does not fall on any small business as defined therein. It is the Division and local issuing authorities that collect, process and store the information mandated by this subchapter. Such information regarding license activity is necessary and appropriate to ensure compliance with the pertinent provisions of N.J.S.A. 33:1-1 et seq.

Subchapter 4: The rules in this subchapter apply to any person or entity which seek to acquire an interest in a retail license when the applicant is a member of the municipal issuing authority. The rules also apply if there is a restructuring in ownership of such a license. Division records reflect that a minimal number of entities are mandated to comply with this regulation in a year.

This limited number of persons or entities would be classified as small businesses under the Regulatory Flexibility Act. The requirement to complete a State application form with a statutorily mandated fee, in addition to costs for publication, are the primary costs for compliance as no professional services are necessary to complete the application etc., although some affected entities may hire same as a matter of business practice. No other reporting, recordkeeping or other compliance requirements are imposed. The requirements imposed are considered the minimum to effectuate the mandates for application, payment of fees and advertisement.

Subchapter 5: This subchapter, proposed for readoption with amendments, affects persons or entities applying for the issuance of social affair permits, special concessionaire permits, special permits to court appointed fiduciaries

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or other Special permits pursuant to N.J.S.A. 33:1-74. Approximately 80 percent of the affected entities would be defined as a small business under the Regulatory Flexibility Act. This subchapter does require completion of a State form, payment of a statutorily established fee from $5.00 to $1,000 and publication of notice in newspapers. No professional services are required to complete the requirements although affected entities may hire same. No other reporting, recordkeeping or other compliance requirements are imposed and there is no distinction made for a small business since the requirements imposed are considered the minimum to effectuate pertinent law and necessary application, fee and advertising mandates.

Subchapter 6: This proposed readoption does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act. This establishes a framework for the extension of a license to a fiduciary by operation of law. The affected entities are the municipal clerks, ABC Board Secretaries at the local level and the Division in the receipt and review of the petitions filed by the various fiduciaries.

Subchapter 7: This proposed readoption impacts upon persons or entities seeking to acquire or relocate an existing State or municipally issued license. Person-to-person, place-to-place or combined transfers cannot take place without following the application and advertising requirements of this subchapter.

Approximately 90 percent of the affected entities would be classified as a small business as defined by the Regulatory Flexibility Act. Completion of an application form, payment of fees and submission of pertinent documents can be done without professional services although certain of the affected entities do so as a matter of choice and notarization of forms is required. No other reporting, recordkeeping or other compliance requirements are imposed. There is no distinction made for a small business applicant or licensee as the requirements imposed are considered the minimum to effectuate pertinent law regarding applications, payment of fees and advertisement.

Subchapter 8: Approximately 80 percent of the over 1,200 club licensees would be classified as a small business under the Regulatory Flexibility Act. There are no fees required in this subchapter as the fee is set forth in N.J.S.A. 33:1-12 ($50.00 to $150.00). No professional services are mandated although the affected entities may utilize professional services for accounting, etc. There is no distinction made in this subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate compliance with the law.

Subchapter 9: Division records reflect that only one warehouse receipts license has been issued in the last decade. The proposed repeal of this rule does not require a regulatory flexibility analysis as this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act.

Subchapter 10: The provisions in subchapter 10, as amended, will apply to both plenary as well as farm wineries, wine blending licensees, and parcel delivery services. The licenses issued under this subchapter allow appropriate licensees to either manufacture and sell wine both at wholesale and retail, to blend wine with other permitted beverages, or to use a parcel delivery service to ship wine to New Jersey purchasers. These provisions also impact on existing State license holders should there be a restructuring of the licensed corporate holder. Currently, less than 20 wineries are licensed and required to follow the application and advertising requirements of this subchapter.

These wineries can generally be considered as small businesses as defined by the Regulatory Flexibility Act. An applicant for a farm winery, plenary winery or wine blending license must submit an application which includes various documents to demonstrate the ability of the applicant to comply with the pertinent provisions of law. There is a graduated filing fee for a farm winery license ranging from $50.00 to $300.00 depending upon the number of gallons manufactured per year by the licensee, but the fee for a plenary winery license is set at $750.00. Farm and plenary winery licensees must also pay fees of $200.00, for each salesroom, for the right to sell the wine products in original packages at retail to consumers in any of up to five salesrooms each licensee may have apart from the winery premises. Additionally, two or more farm or plenary wineries can join together and, for an additional fee of $500.00 for each salesroom, such licensees can establish one jointly operated salesroom for each county, at which they can sell any farm or plenary winery's product. A wine blending licensee must pay a fee of $500.00.

A licensee must ensure that the container in which the wine is sold bears a label containing required information regarding the product, name, type, alcoholic content, net contents and the name and address of the licensee indicating that it is a "New Jersey Wine." Another recordkeeping requirement is that all wine products offered for resale by a plenary or farm winery licensee to another New Jersey licensee or consumers shall be brand registered. There are no other reporting, recordkeeping or capital expenditures required by this subchapter and professional services are not required for compliance. There are no distinctions made for a small business as the requirements imposed are considered the minimum necessary to effectuate pertinent law. To lessen these requirements would frustrate the statutory and regulatory standards developed for the industry and consumers.

Subchapter 11: The proposed repeal of this subchapter does not require a regulatory flexibility analysis as the repeal does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act. The necessary parameters imposed upon farm wineries by this subchapter are are proposed for readoption with amendments in subchapter 10.

Subchapter 12: This subchapter, as it applies to individuals who apply for permits to manufacture wine and malt alcoholic beverages in their home, does not require a regulatory flexibility analysis as the applicants cannot commercially use the beverage produced, and therefore would not be considered a small business as defined by the Regulatory Flexibility Act. The fee for the permit is $10.00 and there were approximately 150 permits issued in the past year. There are no bookkeeping or other recordkeeping requirements imposed upon the home manufacturer.

The amendments proposed to this subchapter will authorize persons to offer space, equipment, ingredients, bottling supplies, advice and expertise on non-commercial premises for the production of a permittee's malt alcoholic beverage or wine. It can be anticipated that those entities offering these services will be a small business as defined in the Regulatory Flexibility Act. There is a fee imposed of $400.00 in order to obtain the required public warehouse license. The owner of the non-commercial premises must provide written notice of the proposed operation and keep records of permittees using the facility. The records must be maintained for a period of two years. There are no other fees, reporting, recordkeeping or capital expenditures required by this subchapter. The costs of operating such facility will vary from owner to owner. There is no distinction made for a small business applicant as the requirements imposed are considered the minimum to effectuate pertinent law and appropriate regulatory oversight.

Subchapter 13: The rules in this subchapter apply to all persons or entities that hold State liquor licenses and they require that such persons complete questionnaires about the licensee, its officers, directors, stockholders and employees. Many of the State licensees affected by this requirement are estimated to be a small business as defined by the Regulatory Flexibility Act. The information required is available from payroll and other records required to be kept by the business entity and there are no fees required by this subchapter. No other reporting, recordkeeping or other compliance requirements are imposed. Professional services are not required to complete the questionnaire. There is no distinction made for a small business licensee since the requirements imposed are the minimum to effectuate the requirements of disclosure under law.

Subchapter 14: This subchapter requires individuals who are disqualified from working for the holder of an alcoholic beverage license because of age or conviction of a crime of moral turpitude to apply for and receive a permit from the Division of Alcoholic Beverage Control. The rules in this subchapter do not apply to a small business as defined by the Regulatory Flexibility Act. However, there may be some indirect impact upon licensees who seek to employ such individuals and therefore it is properly noted that the requirements on the individuals are considered the minimum necessary to effectuate the pertinent provisions of N.J.S.A. 33:1-26.

Subchapter 15: This subchapter allows persons, disqualified from owning a liquor license or being employed in the industry, to seek removal of the disqualification resulting from a conviction of a crime of moral turpitude. Such persons would not be defined as a small business by the Regulatory Flexibility Act and therefore an analysis is not required.

Subchapter 16: The rules in this subchapter require individuals who seek to sell alcoholic beverages, as employees of licensed manufacturers or wholesalers, to apply for and obtain a solicitor's permit as required by law. The provisions of the Regulatory Flexibility Act do not apply to these individuals as they are not employers but prospective employees. However, N.J.A.C. 13:2-16.15 and 16.16 require a solicitor's employer to reduce to writing the employment contract between the parties and to file annually a statement of compensation for each solicitor. These records should be available from other business data kept for tax and employment purposes. There is no distinction made for small business licensees that employ solicitors since the requirements imposed are the minimum to effectuate the requirements for disclosure and administrative control and to lessen them would frustrate the statutory intent.

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Subchapter 17: This subchapter defines the procedure that must be followed when an affected party files an appeal with the Director from an action taken at the municipal level concerning a retail liquor license. In most instances the appeal is filed by a small business as defined by the Regulatory Flexibility Act. There is a filing fee of $100.00 and other compliance requirements include the filing of appropriate documents with the Director. There are no other reporting, recordkeeping or capital expenditures required by the subchapter although many appellants retain legal counsel which results in litigation expenses. There are no distinctions made for a small business as the requirements imposed are considered the minimum to effectuate the requirements of due process in accordance with law.

Subchapter 18: This subchapter sets forth the procedure that New Jersey licensed wholesalers must follow to file a petition with the Division alleging discrimination by a supplier or manufacturer which restricts the ability of the wholesaler to continue to purchase and sell nationally advertised wines or distilled spirits. The business entity filing such petition can generally be considered to be a small business as defined by the Regulatory Flexibility Act. Requirements imposed to comply with the rule include the filing of documents and payment of a filing fee of $100.00 mandated by law. Most business entities retain legal counsel to prosecute a discrimination proceeding which will result in litigation expenses. There are no other reporting, recordkeeping or capital expenditures required and there is no distinction made in this subchapter for a small business as the requirements imposed are considered the minimum to effectuate pertinent law governing the procedures for hearings of this type.

Subchapter 19: This subchapter sets forth the procedural and substantive rules that apply when a license is subject to a state or municipal administrative disciplinary proceeding alleging a violation of law, regulation or municipal ordinance. There is no distinction made for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements of due process and to lessen the requirements would frustrate the pertinent statutory provisions. In most cases however, the persons or entities involved in disciplinary proceedings are a small business as defined by the Regulatory Flexibility Act. There are no fees, reporting, recordkeeping or other expenditures required by this subchapter unless an affected licensee determines to retain legal counsel to defend against a disciplinary charge.

Subchapter 20: This subchapter affects persons or entities involved in the commercial transportation of alcoholic beverages into, out of, or within the State that currently hold a New Jersey License that authorizes the wholesale sale of alcoholic beverages. It is estimated that approximately 80 percent of these suppliers and wholesalers would be defined as a small business by the provisions of the Regulatory Flexibility Act. There are recordkeeping and reporting requirements which include the preparation, dissemination and retention of invoice documents for one year. The requirements for licensure and identification of vehicles used for alcoholic beverage transportation mandate payment of fees such as $50.00 for application for a transit insignia per vehicle, $20.00 for each transportation license insignia and an annual fee of $150.00 for plenary or farm winery licensees with retail privileges seeking authorization to utilize a parcel delivery service.

There are no other capital expenditures or compliance requirements imposed and the rules have established the minimum necessary requirements to avoid improper diversion of alcoholic beverages, avoidance of tax losses or discriminatory sales at different prices to similarly situated buyers of alcoholic beverages.

Subchapter 21: This subchapter affects persons or entities that generally do not hold a State issued license but seek authorization to transport alcoholic beverage into or out of New Jersey as part of a commercial operation or as individuals seeking to transport for personal use in amounts that exceed statutory limits. Those individuals who pay a fee of $25.00 for a permit to authorize the interstate transportation of alcoholic beverages for personal use in excess of statutory limits would not be considered a small business as defined by the Regulatory Flexibility Act.

Those entities that acquire Limited Transportation permits pay a fee of $400.00 per year. Emergency Trip permits require a $25.00 fee and both permits are applied for on forms prescribed by the Director. It is estimated that 80 percent of these entities would be considered a small business as defined by the Regulatory Flexibility Act. There are no other fees, reporting, recordkeeping, compliance requirements or other capital expenditures imposed by the subchapter. There is no distinction made for small business as the requirements are the minimum necessary to comply with law and to minimize the improper diversion of alcoholic beverages and the avoidance of payment of lawful taxes.

Subchapter 22: The provisions in this subchapter impact upon the over 1,900 businesses that hold plenary and limited retail distribution licenses. These licensees would be considered a small business as defined by the Regulatory Flexibility Act. There are no additional reporting or recordkeeping requirements imposed by this subchapter but there is a compliance requirement in terms of successfully completing the educational training requirements of these rules. At least one person actively engaged in the operation or control of the licensed business must attend and successfully complete the requirements of the educational training program. There are no capital costs or professional expenses associated with the rules but there is a fee for the training ranging from $50.00 to $150.00. A request for deferment of training requires a $25.00 fee and there is no distinction made for small business in this rule as all affected licensees are small businesses and the requirements imposed are the minimum necessary to effectuate the legislative intent of N.J.S.A. 33:1-12.40 through 12.48.

The rule does contemplate potential reporting, recordkeeping and compliance requirements upon non-profit educational institutions which the Director may elect to contract with to implement the training program. Such institutions would not be a small business as defined by the Regulatory Flexibility Act. Furthermore, the requirements of this rule would not be imposed upon an educational institution unless the institution entered into a contract, by its own volition, with the Director.

Subchapter 23: The rules in subchapter 23 affect nearly 12,000 persons or entities that hold liquor licenses in the State of New Jersey. Approximately 90 percent of these entities would be considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. while most of the sections in the subchapter identify activity that is either prohibited or required for compliance with the law, there are provisions in N.J.A.C. 13:2-23.13, 23.22, 23.23, 23.31, and 23.32 that set forth certain record keeping or reporting requirements in the area of retention of license applications and lists of employees; the maintenance of proper label or tap marker designations for alcoholic beverages; the hiring of police officers as employees; and the keeping of accurate financial records concerning the operation of the licensed business.

The rules require no fees, nor are there any other capital outlays or professional services required for compliance, except as a licensee may choose to utilize if desired. There is no distinction made for a small business in the subchapter since the rules involved are considered the minimum necessary to ensure compliance with statutory requirements and ensure proper supervisory control by the Division of Alcoholic Beverage Control and the 525 municipal issuing authorities that also supervise the retail licenses in their communities. To lessen the requirement would frustrate the statutory and regulatory scheme.

Subchapter 24: The rules in this subchapter affect those entities, acting as suppliers or wholesalers, which engage in the marketing and sale of alcoholic beverages of this State. The licensed entities that manufacture or wholesale beverages would be affected as well as those importers or wholesalers not licensed within the State but whose business is with New Jersey licensees. Many of these entities would be considered a small business as defined by the Regulatory Flexibility Act.

The subchapter requires filing and recordkeeping of price information, promotional offerings, advertising expenditures, credit to retailers, rebate information, and other marketing initiatives. A proposed deletion of N.J.A.C. 13:2-24.12(b), the quarterly reporting requirement, reduces an administrative burden on licensees, permittees or registrants while the information contained therein can be produced upon demand of authorized persons. There are no fees imposed but it can be assumed that most affected businesses utilize professional accounting services. There is no distinction made for a small business in this subchapter as the requirements imposed are the minimum necessary to effectuate pertinent law and policy to foster a fair, non-discriminatory and controlled sale and marketing of alcoholic beverages in the State. To lessen these requirements would frustrate the regulatory standards developed, in accordance with law, for the industry and consumers.

Subchapter 25: The provisions in this subchapter reflect legislative policy and concern the delivery and inventory of alcoholic beverage products in the State. There is no distinction made for a small business licensee since the requirements imposed are considered the minimum to effectuate the mandates of N.J.S.A. 33:1-2, which include the collection of taxes imposed upon alcoholic beverages and a framework for the industry that encourages the beneficial aspects of competition. The rules in this subchapter impose no recordkeeping reporting requirements or fees and no professional services are required for compliance with this subchapter.

Subchapter 26: The rules in this subchapter affect the nearly 350 cooperative buying groups. These cooperatives are made up of individual

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retail licensees of which approximately 90 per cent would be considered a small business as defined by the Regulatory Flexibility Act. Cooperatives are required to register with the Division at a fee of $10.00 per participating member and the cooperative must have a written agreement which may require professional legal services. Other expenses which might be incurred involve credit sales to a cooperative which require assurances of payment which might be satisfied by a bond or other cash escrow. There are no other reporting or recordkeeping requirements mandated by this subchapter although a cooperative may maintain a warehouse and a bank account. There is no distinction made for a small business as the requirements imposed are considered the minimum to effectuate pertinent law and policy governing the relationship of separate licensees who join together in a cooperative.

Subchapter 27: This subchapter primarily impacts upon manufacturers, suppliers, importers, brand registrants, wholesalers and retail licensees and permittees who sell, distribute, or market malt alcoholic beverages (other than malt cooler products) for resale in New Jersey.

Initially, those manufacturers or brand owners who do not currently ship certain products into New Jersey because of the existing subsection prohibiting deposited marked containers, will be able to obtain an exemption from this prohibition for all alcoholic beverages except malt alcoholic beverages (other than malt coolers) in deposit marked containers. For malt alcoholic beverages, they will be able to request an exemption from the proposed subsection if they will not be selling or shipping in excess of 3,000 barrels or its equivalent, in a calendar year, of any particular product. This exemption will significantly impact a large number of brewers who control less than two percent of the market share in the United States and presumably will now be able to sell their products in New Jersey. These brewers will now be able to offer their products for resale in this State without having to incur the additional expense of producing separate labels to conform to the deposit marked container prohibition. The subchapter will also allow the few major producers, those controlling 98 percent of the market share, to retain the protection that has been demonstrated as being required to prevent the unauthorized transshipment of their major selling brand products.

Additionally, this proposed amendment will allow the nearly 500 State licensees, as well as the more than 10,000 retail licensees, to obtain products not currently available for sale in New Jersey. Ninety-five percent of the affected entities would be classified as a "small business" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Other than breweries and brand owners having to certify that exempted malt alcoholic beverage sales will not exceed 3,000 barrels in a calendar year, there is no additional record-keeping or other compliance requirements being imposed upon nor will there be any kinds of professional services required by any small businesses. No capital costs or annual costs will be incurred to comply with this subchapter. It is anticipated that additional sources of revenue will be gained by licensees from new products which can now be shipped into this State because of the relaxation of this rule. Since transshipping affected the major selling brands of malt alcoholic beverages and those still will be subject to the prohibition of being sold in deposit marked containers, little adverse economic impact is expected on small businesses in this State.

Subchapter 28: There is no regulatory flexibility analysis required as the proposed repeal of this subchapter will not impose any recordkeeping, reporting or compliance requirements upon a small business as defined in the Regulatory Flexibility Act. The current practices of the retail consumption licensees that have the privilege of selling alcoholic beverages, including wine, by the glass or open container, are not violative of pertinent law with respect to the transfer of the wine from original containers and therefore this rule is not necessary for the protection of the consuming public.

Subchapter 29: This subchapter primarily impacts upon the Division and the public by identifying those records that the Division maintains and their classification as public or confidential. The subchapter does impose a recordkeeping requirement upon licensees with respect to the time period that records maintained by licensees must be kept. However, this is the only recordkeeping requirement and there is an economic advantage to a licensee by allowing the storage of records by alternative methods (computer) or at locations other than the licensed premises. There is no impact on small business as defined by the Regulatory Flexibility Act.

Subchapter 30: This subchapter, requiring registration of stills and other distilling apparatus, would affect entities that could be considered a small business as defined by the Regulatory Flexibility Act. Although there has been virtually no activity relating to the registration of stills this subchapter is appropriate for readoption in order for any future applicants to be noticed of the requirements for registration, removal and sale of stills. The rules do require registration with the Division on an application form without imposition of a fee. There are no recordkeeping, reporting requirements or professional services needed for compliance. There is no distinction made for a small business registrant as the requirements imposed are considered the minimum to effectuate pertinent law.

Subchapter 31: A regulatory flexibility analysis is not required because this proposed readoption does not impose reporting, recordkeeping or other compliance requirements on small business as defined by the Regulatory Flexibility Act. This subchapter, providing for seizure and forfeiture of property, impacts upon persons who engage in illegal alcoholic beverage activity.

Subchapter 32: The proposed repeal of this subchapter, which sets forth the procedures concerning the sale of forfeited property, will have no impact upon any individuals or entities that would be considered a small business as defined by the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required.

Subchapter 33: This subchapter affects all suppliers, importers, manufacturers and wholesalers that sell alcoholic beverages to licensed retailers in the State. It is estimated that approximately 80 percent of the affected businesses would be defined as a small business by the Regulatory Flexibility Act. This rule requires a $20.00 filing fee for an original brand registration filing and a $10.00 fee for an amended filing. The Division provides a form to effectuate the registration and there are no other recording, capital expense, recordkeeping or professional services required to comply with the regulation. There is no distinction made for a small business registrant since the requirements imposed are considered the minimum to effectuate pertinent provisions of law N.J.S.A. 33:1-2. To lessen the requirements would frustrate the statutory standards.

Subchapter 34: These proposed new rules affect licensees presently holding a plenary retail consumption license operated in conjunction with an immediately adjacent restaurant. These licensees can be considered a small business as defined by the Regulatory Flexibility Act. Recordkeeping requirements are imposed upon the restricted brewery activities with respect to compliance with pertinent provisions of law regarding the brewing of the beverage, compliance with local, county and State law regarding manufacturing and waste water discharge and sale and display of the beverage for off-premises consumption. These requirements will require fiscal expenditures by the licensee and will vary from brewery to brewery. The fee of $1,000 to $2,000 is set by statute. Although it is anticipated that restricted brewery licensees will be small business entities there is no distinction made for small business as all requirements are considered to be reasonable and the minimum necessary to effectuate the law and provide for the health and safety of the consuming public.

Subchapter 35: The rules in this subchapter affect retail licensees that hold either plenary or seasonal retail consumption licensees without the "Broad package privileges. "These rules limit the location where these licensees can sell or display alcoholic beverages in original containers for consumption off the licensed premises. Approximately 90 percent of the licensees affected by this subchapter would be considered a small business under the Regulatory Flexibility Act. The rules impose no fees, reporting or recordkeeping requirements. The expenses necessary to conform to the required physical configuration of the licensed premises to satisfy the product display, shelving and barroom minimum will be dependent upon the extent and nature of the changes to the licensed premises. As the requirements imposed are the minimum to effectuate the law there is no distinction made for a small business.

Subchapter 36: These rules set forth the procedure to request an advisory opinion from the Division and such inquiries are generally from individuals or entities who, in most cases, would be considered a small business as defined by the Regulatory Flexibility Act. There is no specific recordkeeping, reporting or fee requirements imposed except that the request for the advisory opinion must be made in writing. There is no distinction made in this subchapter for a small business as the requirements imposed are considered the minimum to effectuate reasonable access to the Division for general guidance or clarification of regulatory policy. To lessen the minimal requirements would frustrate the purpose of this subchapter.

Subchapter 37: These proposed new rules will authorize permittees or licensees who are actively exercising the on-premise consumption privilege to host consumer alcoholic beverage tastings or dinner tastings under certain guidelines. In addition, the proposed rule will allow suppliers, manufacturers or wholesalers who receive a special permit to participate in consumer tastings and tasting dinners solely to offer educational commentary on alcoholic beverages. It is anticipated that the vast majority of licensees who host these events will qualify as a small business as defined in the Regulatory Flexibility Act.

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Any fees, reporting or recordkeeping will be imposed upon alcoholic beverage suppliers, manufacturers or wholesalers which many qualify as a small business under the Act. There is an annual permit fee imposed of $100.00 for each supplier, manufacturer or wholesaler and an additional $100.00 permit for each solicitor or duly authorized representative to participate in consumer tastings. In addition, the supplier, manufacturer or wholesaler are required to file request forms with the Division ten days prior to participating in any consumer tasting event.

There are no other fees, reporting, recordkeeping or capital expenditures required by this subchapter. There is no distinction made for a small business applicant as the requirements imposed are considered the minimum to effectuate pertinent law and appropriate regulatory oversight.

Subchapter 38: The proposed readoption of this subchapter, which regulates hours of sale of package goods, impacts upon thousands of licensees which have the retail sales privilege. It is estimated that approximately 90 percent of these licensees would be considered a small business as defined by the Regulatory Flexibility Act. This subchapter confirms the basic principle the the hours and days when a retail licensee can sell alcoholic beverages is regulated by State law, municipal ordinance and Division regulation. There are no recordkeeping, reporting or fee requirements and professional services are not needed to comply with these rules. There is no distinction made for a small business as the regulation of hours is considered the minimum to effectuate the law and serve the public policy purpose of strict regulation of the sale and use of alcoholic beverages.

Subchapter 39: This proposed readoption concerns return of alcoholic beverages by a retailer to a wholesaler under certain circumstances which require certain recordkeeping. No fees are required, nor are there any professional services needed for compliance. The expense for record production and retention is minimal upon the holders of the manufacturer or wholesale licenses, some of which would be considered a small business pursuant to the Regulatory Flexibility Act.

Subchapter 40: This subchapter requires persons who wish to acquire an identification card to establish they are 21 years of age or older to apply to their county of residence and pay a $6.00 fee. The county clerks of the 21 counties are also impacted by this rule. Neither the applicant nor the county would be considered a small business as defined by the Regulatory Flexibility Act. Therefore, an analysis is not required although it is noted that the requirements imposed are considered the minimum necessary to effectuate the statutory provisions of N.J.S.A. 33:1-81.2 et seq.

Subchapter 41: These proposed new rule only affect the three non-profit corporations which currently conduct theatrical and musical performances on premises which have a seating capacity of 1,000 persons or more. These licensees can be considered a small business as defined by the Regulatory Flexibility Act. Similar recordkeeping requirements are imposed upon these licensees to ensure compliance with pertinent provisions of law as are imposed upon all other retail licensees. These requirements will require fiscal expenditures by the licensee and will vary from dependent upon the size of the facility and the restaurant and beverage activity conducted under this license. The fee of $200.00 to $2,000 is set by statute. Although it is anticipated that these licensees will be small business entities there is no distinction made for small business as all requirements are considered to be reasonable and the minimum necessary to effectuate the law and provide for the health and safety of the consuming public.

Appendix: The repeal of the chapter Appendix imposes no compliance requirements on small businesses.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:2.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:2-9, 11, 28 and 32, and 13:2-Appendix.

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

SUBCHAPTER 1. FILING OF APPLICATION AND ADVERTISING NOTICE OF APPLICATION FOR STATE LICENSE

13:2-1.1 Filing of application; advertising

[(a)] Application for license must be filed on forms [promulgated] **prescribed** by the Director, Division of Alcoholic Beverage Control, in duplicate with the Division at or before the first insertion of advertisement and accompanied by the full annual license fee. If the application is to include as the licensed premises a building not yet constructed, plans for the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material, and the overall room dimensions.

13:2-1.2 Corporate or partnership applicant; building not yet constructed

(a) (No change.)

(b) If the application is to include as the licensed premises a building not yet constructed, also insert in the Notice the following: "Plans of building to be constructed may be examined at the Office of the Director of the Division of Alcoholic Beverage Control, [TRW Complex, Bldg. 20, 200 Woolverton Street] **140 East Front Street**, Trenton, New Jersey 08625".

13:2-1.3 Publication of notice of application

(a) Notice of application shall be published by all applicants for State licenses, except Transportation, Public Warehouse or Warehouse Receipts licenses, in the following form:

-NOTICE-

ALCOHOLIC BEVERAGE LICENSE

Take notice that _____
(Name of Applicant)

trading as _____
(Trade Name, if any)

has applied to the Director, Division of Alcoholic Beverage Control, for a State-issued _____ license for
(Type of License)

premises situated at_____.
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:

See*

(See ** to insert other information if applicable)

Objections, if any, should be made immediately in writing to: Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

_____
(Name of Applicant)

_____
(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If applicant is a corporation, insert the names and residence address of all officers and directors, and the names and residences of all stockholders holding one percent or more of any stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the names and residence address of all general partners and any limited partners holding an interest of one percent or more.

If the application is for a building not yet constructed, insert in the Notice the following: "Plans of the building to be constructed may be examined at the Office of the Director, Division of Alcoholic Beverage Control, [200 Woolverton Street] **140 East Front Street, Trenton, New Jersey 08625.

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under its license, insert in the Notice the following: "The applicant intends to engage in the retail sale of

_____ at _____
(Alcoholic Beverage Type) (No.) (Street)

_____
(Municipality)

under the terms and conditions allowed by law."

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

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(d) Where the applicant intends to conduct retail sales as may be authorized under its license, it shall provide an affidavit that a copy of notice in the proper form has been served personally or by ordinary mail on the clerk or board secretary of the municipality in which the retail sales will take place.

13:2-1.9 Rules of general [application] **applicability**; Relaxation

(a) The [procedural] rules [in] **of** this chapter [concerning application for licenses, type of forms required, notices to be utilized and specific information to be listed represent provisions of general applicability that] may be relaxed by the Director upon a showing of [good cause, except where specifically required by law.] **undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would not unduly burden any affected parties; and, that the waiver is consistent with the underlying purposes of Title 33 and the implementing regulations. Waiver requests must be submitted in writing to the Director and shall include all documentation which supports the applicant's request for a waiver.**

(b) No licensee, permittee, applicant or any shareholder, partner or other person having or applying for an interest in a license or permit shall refuse to submit for fingerprinting when so required by the Director or the local issuing authority.

(c) No licensee, permittee, applicant or any shareholder, partner or other person having or applying for an interest in a license or permit shall refuse to submit full disclosure in a financial investigation, including but not limited to all savings, checking, or other bank or financial accounts held by or for such person or entity individually, jointly, or in trust (for himself or another person or entity), when so required by the Director or the local issuing authority.

(d) Checks submitted by a licensee, permittee or applicant which are returned unpaid to the Director or other issuing authority shall subject the licensee, permittee or applicant to disciplinary action or denial of current and future applications.

SUBCHAPTER 2. FILING OF APPLICATIONS AND ADVERTISING NOTICE OF APPLICATION FOR MUNICIPAL LICENSE

13:2-2.1 Application forms

Application for license must be filed with the issuing authority, in triplicate, on forms [promulgated] **prescribed** by the Director, Division of Alcoholic Beverage Control at or before the first insertion of advertisement together with the full annual license fee and an additional [$50.00] **$100.00** filing fee payable to the Division of Alcoholic Beverage Control. One copy of the application and the non-returnable filing fee of [$50.00] **$100.00** shall be forwarded by the issuing authority to the Director immediately upon receipt thereof, and a second copy returned to the applicant. If the application is to include as the licensed premises a building not yet constructed, plans of the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material and the overall room dimensions.

13:2-2.2 Form of notice of application

[(a)] Notice of application shall be published in the following form:

-NOTICE-

ALCOHOLIC BEVERAGE LICENSE

Take notice that _____
(Name of Applicant)

trading as _____
(Trade Name, if any)

has applied to _____
(Name of Issuing Authority)

of _____
(Municipality)

for a _____ license for premises situated at
(Type of License)

_____
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:

See*

(See ** to insert other information if applicable)

Objections, if any, should be made immediately in writing to:

_____, of _____
(Municipal Clerk) (Municipality and Mailing Address)

_____
(Name of Applicant)

_____
(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If the applicant is a corporation, insert the names and residence addresses of all officers and directors and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the names and residence addresses of all partners and any limited partners holding an interest of one percent or more.

If the applicant is a club, insert the names and residence addresses of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

**If the application is for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk."

13:2-2.3 Issuing authority defined

(a) (No change.)

(b) If the application is made by a member of the issuing authority or by a corporation, organization or association [(except a club license)] in which any member of the issuing authority is interested, directly or indirectly, the Director of the Division of Alcoholic Beverage Control is the issuing authority in the form of notice and the notice must state that any objections should be addressed to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625. **This subsection shall not apply to club licenses.**

13:2-2.14 Changes in facts; application

(a) Whenever any change shall occur in the facts as set forth in any application for a retail license, the licensee shall file with the municipal issuing authority an amendment to the license application on a form [promulgated] **prescribed** by the Director reflecting the change and not later than 10 days after the occurrence.

(b) (No change.)

SUBCHAPTER 3. ISSUANCE OF RETAIL LICENSES BY MUNICIPAL ISSUING AUTHORITIES; SPECIAL REVIEW OF ATLANTIC CITY LICENSES

13:2-3.3 [Numbering license certificates] **(Reserved)**

[All license certificates shall bear a 12-digit State-assigned license number that will identify the license's county and municipality, license type, sequential license number in that community and license generation number.]

13:2-3.6 Certification of license activity

[(a)] Each municipal issuing authority shall make or cause to be made daily certification to the Director of all licenses granted during the preceding business day, which certification shall include any license application filings or amendments, any fees to be remitted to the Director, and any resolutions adopted.

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SUBCHAPTER 4. ISSUANCE, **RENEWAL** OR TRANSFER OF MUNICIPAL RETAIL LICENSES (OTHER THAN CLUB LICENSES) BY THE DIRECTOR

13:2-4.1 Interest in issuance, **renewal** or transfer of license; application made to the division.

(a) No municipal issuing authority may issue, **renew** or transfer a license to or from any of its members, or issue, **renew** or transfer a license [(other than a club license)] to or from any corporation, organization, or association in which any of its members is interested directly or indirectly.

(b) No municipal issuing authority may transfer to other premises a license of any of its members, or transfer to other premises a license [(other than a club license)] of any corporation, organization or association in which any of its members is interested, directly or indirectly.

(c) Whenever the municipal issuing authority is prohibited from acting by this section, **or is unable to reach a quorum due to individual conflicts of interest,** application must be made to the Director of the Division of Alcoholic Beverage Control and shall be governed by this subchapter.

(d) The provisions of (a) and (b) above shall not apply to club licenses.

13:2-4.3 New or renewal license fees; certification by issuing authority

(a) Applications for a new license or for a renewal of an existing license shall be accompanied by a fee of $50.00 in cash, money order or [certified] check drawn to the order of the Division of Alcoholic Beverage Control.

(b) (No change.)

13:2-4.4 Fee for license transfer to other persons or other premises; certification

(a) Applications for transfer of license to other persons only, or applications for transfer of license to other premises only (not combined) shall be accompanied by:

1. A fee of $50.00 in cash, money order or [certified] check drawn to the order of the Division of Alcoholic Beverage Control and retained by the Director whether or not the transfer is granted, and accounted for as are other license fees.

2. (No change.)

13:2-4.5 Fee for combined transfers; certification

(a) Transfers of license both as to person and place may be applied for simultaneously and in a single application, accompanied by a fee of $50.00 in cash, money order or [certified] check drawn to the order of the Division of Alcoholic Beverage Control.

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

13:2-4.6 Submission of issuing authority's resolution

There shall also be submitted to the Director a certified copy of a resolution adopted by the issuing authority of the municipality wherein the premises sought to be licensed are situated, setting forth that said issuing authority has no objection to the issuance, **renewal** or the transfer, as the case may be of the license applied for and consents thereto, and, furthermore, is not aware of any circumstances or provisions of law or local ordinance which would prohibit the issuance, **renewal** or the transfer, as the case may be of the license.

13:2-4.7 Advertising notice of application

The rules applicable to the application, advertising and hearing rights concerning a municipal license or the transfer thereof (N.J.A.C. 13:2-2 and N.J.A.C. 13:2-7) shall apply when application is made to the Director. However, the notice of application, as published, shall state that such application has been made to, and objections if any should be addressed to: Director of the Division of Alcoholic Beverage Control, [TRW Complex, 200 Woolverton Street,] CN 087, Trenton, New Jersey 08625.

13:2-4.8 Refund of fees

If the application for license issuance or transfer is denied for any reason whatsoever or withdrawn, a statutory refund of 90 percent of the fee deposited with the municipality shall be made by the municipality to the applicant. The remaining 10 percent shall be deemed an investigation and processing fee and shall be retained by the municipality. **If an application for a renewal of license is denied, refund of fees shall be in accordance with N.J.A.C. 13:2-11.** The $50.00 State fee required to accompany the application shall be retained as a processing fee by the Director.

13:2-4.10 Notice of change in facts in application

The rules applicable to filing a notice of change in the facts set forth in the application for a retail license and to publishing a notice of change in corporate structure and furnishing proof thereof (N.J.A.C. 13:2-2.14 through 2.16) shall apply to all retail licensees holding licenses issued by the Director. However, the licensee shall file such notice with and furnish such proof directly to the division; and where the notice concerns a change in corporate structure, the notice as published shall state that information concerning the qualifications of any of the stockholders of the corporate licensee shall be addressed to the Director of the Division of Alcoholic Beverage Control, [TRW Complex, 200 Woolverton Street,] CN 087, Trenton, New Jersey 08625.

SUBCHAPTER 5. ISSUANCE OF SPECIAL PERMITS BY DIRECTOR

13:2-5.1 Social affair permit

(a) (No change.)

(b) A fee, in the sum of $50.00, per day, in cash, [certified] check, or money order made payable to the Division of Alcoholic Beverage Control must accompany each application for social affair permit filed by religious, civic, [or] educational **or veterans** organizations; and $75.00 for such other organizations, and must be received at least seven days in advance of date for which permit is requested.

(c) Applications for a social affair permit shall be made on forms [promulgated] **prescribed** by the Director and endorsed by the chief of police (or [his or her] **authorized** designee) and the clerk of the municipality wherein the affair is to be held.

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

(f) [Within] **The Director may require the permittee to file within** 10 days after the social affair[, the permittee shall file with the Director] a signed inventory report on forms [promulgated] **prescribed** by the Director showing all purchases of alcoholic beverages and the source and disposition thereof. Failure to file the inventory report shall be cause for denial of future applications for a social affair permit.

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

13:2-5.2 Special concessionaire permit

(a) (No change.)

(b) The term of a special concessionaire permit shall be from July 1 through June 30 unless otherwise specified. The fee for the permit shall be fixed by the Director, and must be paid with the application in either cash, [certified] check or money order payable to the Division of Alcoholic Beverage Control.

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

(e) Notice of application shall be published in the following form:

NOTICE

ALCOHOLIC BEVERAGE PERMIT

TAKE NOTICE THAT _____ has applied to the
(Name of Applicant)

DIRECTOR of the New Jersey DIVISION OF ALCOHOLIC BEVERAGE CONTROL for a SPECIAL CONCESSIONAIRE PERMIT for premises situated at

_____
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this permit is/are:

See *

See ** to insert other information applicable

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Objections, if any, should be addressed to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

_____
(Name of Applicant)

_____
(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If applicant is a corporation, insert the names and residence address of all officers and all directors, and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the name of the partnership and the names and residence address of all partners and any limited partners holding an interest of one percent or more.

If applicant is a club, insert the names and residence address of the officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

If the application is for a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Director of the Division of Alcoholic Beverage Control, [TRW Complex, Bldg. 20, Woolverton Street] **140 East Front Street, Fifth Floor, Trenton, New Jersey 08625."

(f) Upon timely receipt of a duly signed written objection to the issuance of a special concessionaire permit, the Director will afford a hearing to all parties and notify the applicant and the objector of the date, hour and place thereof. [1.] No hearing need be held if no objection shall be lodged, but the application shall not be denied without first affording the applicant an opportunity to be heard.

(g) (No change.)

(h) The Director may, in [his or her] **the exercise of sound** discretion, impose special conditions on any permit.

(i) (No change.)

[(j) The rules in this section shall be considered as general rules governing the issuance of a special concessionaire permit and may be relaxed or dispensed with by the Director in any case where a strict adherence to them will result in hardship.]

13:2-5.3 Special permit for the sale or purchase of alcoholic beverages

(a) (No change.)

(b) An application for such special permit shall be filed with the Division at least seven days before the proposed sale on forms to be [promulgated] **prescribed** by the Director and accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than $5.00 nor more than [$500.00] **$1,000.**

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

13:2-5.4 Temporary miscellaneous contingency permits; fees

(a) (No change.)

(b) Application for such permits shall be on forms [promulgated] **prescribed** by the Director and shall be accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than $5.00 nor more than [$500.00] **$1,000**.

(c) (No change.)

SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES

13:2-7.2 Application for place-to-place license transfer

(a) Application for transfer of license to other premises, signed and sworn to by the licensee, must be filed with the Director or other issuing authority, as the case may be, at or before the first insertion of the advertisement of the notice of application on forms [promulgated] **prescribed** by the Director.

(b) (No change.)

(c) Expansion of the licensed premises shall require a place-to-place transfer (expansion of premises) application.

(d) Voluntary reduction of the premises or de-licensure of all or a portion of the premises shall require a place-to-place transfer (reduction of premises) application.

13:2-7.3 Application for person-to-person license transfer

Application for transfer of license to another person, or other person and other premises, signed and sworn to by the person who seeks the transfer, and bearing the consent in writing to such transfer by the current licensee, must be filed with the Director, or other issuing authority, as the case may be, at or before the first insertion of the advertisement of the notice of application on forms [promulgated] **prescribed** by the Director.

13:2-7.4 Notice of transfer application, form

(a) Notice of application for transfer of a license shall be published in the following form:

-NOTICE-

ALCOHOLIC BEVERAGE CONTROL

Take notice that application has been made to _____

_____ of _____
(Name of Issuing Authority) (Address)

to transfer to _____
(Name of transferee)

trading as _____ for premises located at
(Trade Name, if any)

_____
(Address of premises to which transfer is sought)

the _____ heretofore issued to
(Type of License and Number)

_____, trading as _____
(Name of Licensee in full) (Trade Names, if any)

for the premises located at _____
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:

_____
(Name(s))

See *

(See ** to insert other information if applicable)

Objections, if any, should be made immediately in writing to:

_____, of _____
(Municipal Clerk or Director, Division of Alcoholic Beverage Control) (Address)

_____
(Name of Applicant)

_____
(Address of Applicant)

*If the applicant is an individual, insert the name and residence address of that individual.

If the applicant is a corporation, insert the names and residence of all officers and directors and the names and residences of all stockholders holding one percent or more of any of the stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the names and residence address of all partners and any limited partners holding an interest of one percent or more.

If the applicant is a club, insert the names and residence address of all officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing officials.

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** If the application is for transfer of a municipal license to a building not yet constructed, insert in the Notice the following: "Plans of building to be constructed may be examined at the office of the Municipal Clerk".

If the application is for a State license for a building not yet constructed, insert "Plans of building to be constructed may be examined at the office of the Division of Alcoholic Beverage Control." **If the application is for a place-to-place transfer which involves an expansion or reduction of the premises, insert "Plans of the current licensed premises and proposed licensed premises may be examined at the office of the municipal clerk (or Division of Alcoholic Beverage Control, if appropriate)."**

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under a State issued license, insert in the Notice the following: "The applicant intends to engage in the retail sale of _____

_____

_____ at _____
(Alcoholic beverage type) (No.) (Street)

_____ under the terms and conditions
(Municipality)

allowed by law."

(b) "Name of issuing authority" in the form in N.J.A.C. 13:2-7.4(a), usually means the governing board or body of the municipality, whatever the name may be, for instance, the mayor and common council, the township council, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority. If the application is made by a member of any issuing authority, or by a corporation, organization or association [(except a club license)] in which any member of an issuing authority is interested directly or indirectly, or if the license sought to be transferred was issued in the first instance by the Director, [he or she] **the Director** is the "issuing authority" and in that event the notice must state that objections be addressed to the Director of the Division of Alcoholic Beverage Control, CN-087, Trenton, New Jersey 08625. **This subsection shall not apply to club licenses.**

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

13:2-7.7 Hearing not required; reasons

(a) If there is no written objection and the issuing authority determines to approve the application, no hearing is required; but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative. **This investigation should include fingerprinting and a criminal background check and financial disclosure documentation.**

(b) No application shall be approved unless the issuing authority affirmatively finds and certifies that:

1. (No change.)

2. The applicant is qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, the regulations promulgated thereunder as well as the pertinent local ordinances and conditions imposed consistent with Title 33; [and]

3. The applicant has disclosed and the issuing authority has reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business[.] **and**

4. The transferee has executed a valid consent to transfer the license.

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

13:2-7.8 Application for place-to-place license transfer

Application for transfers of licenses to other premises shall be on forms [promulgated] **prescribed** by the Director and shall set forth the same information required to be set forth in connection with an original application for license.

13:2-7.9 Application for person-to-person transfer

Applications for transfers of licenses to other persons shall be on forms [promulgated] **prescribed** by the Director and shall set forth the same information required to be set forth in connection with an original application for license.

13:2-7.11 Fee for license transfer to other premises or to another person

Applications for transfers of license to other premises only, or applications for transfer of license to another person only, shall be filed in triplicate and accompanied by a fee of 10 percent of the full annual license fee for said license, which fee shall be retained by the Director or other issuing authority as the case may be, whether or not the transfer is granted, and is to be accounted for as are other license fees. If the application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of [$50.00] **$100.00** to be forwarded to the Director of the Division of Alcoholic Beverage Control along with the original of the application.

13:2-7.12 Fee for combined license transfer

[(a)] Applications for transfer of license to other premises and other persons shall be filed in triplicate and accompanied by a fee of 20 percent of the full annual license fee for said license, which fee shall be retained by the Director or other issuing authority as the case may be, whether the transfer is granted or not, and accounted for as are other license fees. If the application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of [$50.00] **$100.00** to be forwarded to the Director of the Division of Alcoholic Beverage Control along with the original of the application.

13:2-7.15 Certification of license transfers

[(a)] Each municipal issuing authority shall make or cause to be made certification to the Director of all license applications filed transferred denied or withdrawn during the preceding business week, which certification shall include the original of the filed application, any fees to be remitted to the Director and any resolution adopted.

SUBCHAPTER 8. CLUB LICENSES

13:2-8.1 Definitions

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

"Club" means an organization, corporation or association **controlled by and** consisting of 60 or more persons, **of legal drinking age,** operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain.

. . .

13:2-8.6 Qualifications of officers and members

(a) (No change.)

(b) No application shall be approved **or renewed** unless the issuing authority affirmatively finds and reduces to resolution that:

1. (No change.)

2. The officers and directors of applicant club are qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, regulations promulgated thereunder as well as pertinent local ordinances or conditions consistent with Title 33; [and]

3. The club maintains all records required pursuant to N.J.A.C. 13:2-**8.7 and 8.8** [and 8.12.]**; and**

4. The officers and directors of the applicant club have certified, on a form prescribed by the Director, that they have read and understand all their legal responsibilities pertaining to the operation of a club license.

13:2-8.8 Sales restricted to club members

(a) (No change.)

(b) All club licensees shall have and keep on the licensed premises a true record, [in] **on** the form [promulgated] **prescribed** by the Director (set forth below), of all scheduled dinners, luncheons, receptions, dances, parties, catered events and similar affairs held at the club licensed premises and attended by non-club members.

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Date of affair _____

Type of affair _____

Sponsored by _____

Was affair conducted under authority of a special permit? _____

If so, give number of permit _____

Were alcoholic beverages supplied by the club licensee? _____

_____
(Signature of authorized officer)

(c) (No change.)

13:2-8.12 [Books of account] **(Reserved)**

[All club licensees shall have and keep for a five year period a true book or books of accounts wherein there shall be entered a record of all moneys received in the ordinary course of business; a record of the source and amount of all moneys received other than in the ordinary course of business; a record of all moneys expended from such receipts; and the name of the person receiving such moneys and the purpose for which such expenditures were made. All books and records pertaining to such receipts or expenditure, as well as other records required by N.J.A.C. 13:2-8.8, shall be made available for inspection by the Director of the Division of Alcoholic Beverage Control and the other issuing authority, by his or her or its deputies, inspectors, investigators and agents and other officers defined by N.J.S.A. 33:1-1(p).]

SUBCHAPTER 10. PLENARY **AND FARM** WINERY LICENSES; WINE BLENDING LICENSES; RETAIL PRIVILEGES; PARCEL DELIVERY SERVICE

13:2-10.1 Application for plenary **and farm** winery licenses; statement of intent

(a) All applicants for plenary winery licenses shall comply with the application, advertising and hearing provisions of this chapter[, N.J.A.C. 13:2]. The application shall [also be accompanied by a description of the intended activities to be conducted under the authority of the license] **be filed on a form prescribed by the Director in which the applicant shall demonstrate its ability to comply with the requirements of N.J.S.A. 33:1-10.2a**. The **applicant shall file a** statement of intent **which** shall include [at a minimum] the following information: number of acres engaged in cultivating grapes or growing fruit; location of acreage in respect to the proposed licensed premises; type of products to be produced (for example, naturally fermented wines, fortified wines, treated wines); intent to sell products to wholesalers, retailers, or consumers; and intent to utilize other premises for retail sales.

(b) All applicants for a farm winery license shall comply with the application, advertising and hearing provisions of this chapter. The application shall be filed on a form prescribed by the Director in which the applicant shall demonstrate its ability to comply with the requirements of N.J.S.A. 33:1-10.2b. The applicant shall file a statement of intent which shall include the following information: number of acres engaged in cultivating grapes or growing fruit; location of acreage with respect to the proposed licensed premises; means by which acreage is under the applicant's control; plan under which New Jersey grown fruit will constitute at least 51 percent of wine product initially with plans to increase that percentage over five years; intent to sell products to wholesalers, retailers, and/or consumers; number of gallons projected to be produced annually; and intent for off winery premises retail sales locations.

[(b)]**(c)** Any [application for] **winery** licensee [which] **who** seeks permission for [an off-winery] **additional** retail sales premises **shall file an application on a form prescribed by the Director which** shall be accompanied by a sketch of the proposed licensed premises **which** [depicting] **depicts** the area to be included under the license and **includes** the perimeter measurements. If the **additional** sales location is to be within **a premises where** another mercantile business [operation] **is operating,** the application shall be accompanied by a description of the business relationship with the other **mercantile** business [including, at a minimum,] **and shall include,** a copy of the lease agreement; a statement of how the winery will maintain separate accounting for sales; a description of how the applicant will compensate [the] **its** sales employees, and [an identification of] **shall identify** whether any **consumption or** sampling will take place, and if so, how this will be controlled**, and will state its plan for demarcating the licensed premises**.

13:2-10.2 [Certificate] **License certificate** endorsement

Whenever the holder of a plenary **or farm** winery license is granted the privilege of selling **its** wine **products** at retail at a premises other than the winery licensed premises, the license certificate shall be appropriately endorsed by the Director [to set] **and will** forth the retail privileges conferred thereunder, and no plenary **or farm** winery licensee whose certificate does not bear such endorsement shall sell or deliver or allow, permit or suffer the sale or delivery at retail of wine at other than the winery licensed premises.

13:2-10.3 Labeling wine sold at retail

(a) Unless the container in which the wine **product** is sold shall bear a label approved pursuant to the provisions of the Federal Alcoholic Administration Act, each plenary winery licensee having the privilege of selling wine at retail shall attach a label to each container in which wine is sold to consumers, which label shall bear the brand name, type, alcoholic content of the wine stated in percentage of alcohol by volume within an accuracy of one percent, net contents of the container, and name or trade name and address of the licensee.

(b) Unless the container in which the wine is sold shall bear a label approved pursuant to the provisions of the Federal Alcoholic Administration Act, each farm winery licensee shall attach a label to each container in which wine is sold to consumers, which label shall bear the brand name, type, alcoholic content of the wine stated in percentage of alcohol by volume within an accuracy of one percent, net contents of the container, and the name and address of the licensee. Every container's label must indicate that it is "New Jersey Wine" and its wine contents shall comply with the requirements of N.J.S.A. 33:1-10.2b.

(c) All wine products which a plenary or farm winery license shall offer for resale to another authorized New Jersey licensee or to sell to consumers at retail shall be brand registered pursuant to the provisions of N.J.A.C. 13:2-33.1.

13:2-10.4 Hours of retail sales

No plenary **or farm** winery licensee privileged to sell at retail shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any wine at retail during any hours where the retail sale of alcoholic beverages is prohibited in the municipality where the winery retail sale would occur.

13:2-10.5 Application for wine blending license; form

[Applicants for a wine blending license shall comply with the application, advertising, and hearing provisions of this chapter, N.J.A.C. 13:2. The application shall also be accompanied by a description of the intended activities to be conducted under the authority of the license. Such statement of intent shall include at a minimum] **All applicants for a wine blending license shall comply with the application, advertising and hearing provisions of this chapter. The application shall be filed on a form prescribed by the Director in which the applicant shall demonstrate its ability to comply with the requirements of N.J.S.A. 33:1-10.2c. The applicant shall file a statement of intent which shall include** the following information: type of process to be implemented, for example, blending, treating, mixing, or bottling; products to result from process; and intended sales to wholesalers or retailers.

13:2-10.6 [Combination enterprise] **Joint** retail salesroom

(a) A "[combination enterprise] **joint** retail salesroom" is defined as a jointly controlled and operated retail salesroom by at least [five] **two** plenary or farm winery licensees.[, at which premises, the alcoholic products] **Products** [produced under the licenses] of [such] **any plenary or farm winery** licensee[s] may be sold at retail **in joint retail salesrooms** for consumption **on and** off the **joint** licensed **salesroom** premises and [for consumption on the licensed premises] for sampling purposes [only] **on the joint licensed salesroom premises**.

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[(b) Only one combination enterprise salesroom shall be licensed per county and the fee therefor shall be $500.00.]

[(c)]**(b)** Applicants for a [combination enterprise] **joint** retail salesroom permit shall comply with the application, advertising, and hearing provisions of this chapter [N.J.A.C. 13:2]. The application shall also be accompanied by a sketch of the proposed [licensed] **joint salesroom** premises depicting the area to be included within the scope of the license and the perimeter measurements. If the sales location is to be within another mercantile business operation, the application shall be accompanied by a description of the business relationship with the other business [including,] **and shall include** at a minimum, a copy of the lease agreement; a statement of how the winery sales outlet will maintain separate accounting for sales; a description of how the applicant will compensate the sales employees; and a description of any **consumption or** sampling to take place including how this will be controlled, **and will state its plan for demarcating the licensed premises**.

[(d) "Sampling" as authorized under N.J.S.A. 33:1-10 means the selling at a nominal charge or the gratuitous offering of an open container not exceeding one and one half ounces of wine.]

13:2-10.7 Parcel delivery service

[(a) The holder of a New Jersey issued plenary winery license with retail privileges or a farm winery license may, on forms promulgated by the Director, Division of Alcoholic Beverage Control, apply for authorization to ship within this State wine products by parcel delivery service to customers resulting from sales from the winery premises or off winery premises sales locations, or from mail or telephone orders. Wine which is ordered by mail or telephone may be shipped by parcel delivery only if the licensee has a signed authorization by the person placing the order to ship wine upon his order by mail or telephone. In such case, the wine shall be shipped as a restricted delivery and may be delivered only to the residence of the person who placed the order.

(b) The annual fee for a permit to authorize parcel delivery service is $150.00 for a plenary winery licensee and $50.00 for a farm winery licensee.

(c) No delivery shall be completed by a parcel delivery service until the delivering agent shall determine that, at the time of delivery of wine, the party signing the delivery receipt is of legal age to purchase and consume alcoholic beverages.]

Plenary and farm wineries, who wish to ship their wines in this State by parcel delivery services, must comply with the provisions of N.J.S.A. 33:1-28.1 through 28.4.

SUBCHAPTER 12. [WINE] **SPECIAL** PERMITS **FOR HOME MANUFACTURE OF MALT ALCOHOLIC BEVERAGES AND WINES FOR PERSONAL OR HOUSEHOLD USE OR CONSUMPTION**

13:2-12.1 Special **malt alcoholic beverage and** wine permits

(a) [Wine] **Malt alcoholic beverages and wines** for personal **or household use or** consumption may be manufactured only under the provisions of a special [wine] permit, [issuable] **issued** by the Director.[, Division of Alcoholic Beverage Control, which authorizes the permittee to] **This permit allows the** manufacture within the home of the permittee or other **authorized** premises used in connection therewith, [and] during the permit period, **malt alcoholic beverages and** wines in quantities of not more than 200 gallons.

(b) [Wine] **Malt alcoholic beverages and wines** manufactured under the authority of such permit may not be sold under any circumstances, nor may it be used for any purpose other than **for** personal **or household use or** consumption [at the permittee's home by] **of** the permittee [and his family and bona fide guests]. The fee for this permit is [$3.00] **$10.00**.

[13:2-12.2 Ineligibility of licensees

No permit shall be issued to the holder of any alcoholic beverage license.] (Reserved)

13:2-12.3 Ineligibility of [licensed] premises

(a) No permit shall be issued for the manufacture of **malt alcoholic beverages or** wines on premises that are also licensed for the retailing, wholesaling or manufacturing of alcoholic beverages.

(b) "Non-commercial premises" referenced in N.J.S.A. 33:1-75 and as used in this section shall include premises in which equipment and space are leased to a permittee for the purpose of brewing malt alcoholic beverages or fermenting wines for personal or household use or consumption.

(c) Nothing contained within this section shall prohibit the issuance of a special permit for home manufacture of malt alcoholic beverages and wines to a permittee who utilizes an authorized non-commercial premises offering the use of space, equipment, ingredients, bottling supplies, advice and expertise exclusively for the production of the permittee's malt alcoholic beverage or wine. No operation as described in this section shall be permitted unless:

1. The non-commercial premises shall obtain a public warehouse license in accordance with N.J.S.A. 33:1-14.1;

2. The owner of the non-commercial premises shall provide written notice of the proposed operation to, and shall receive written approval from the Director. The Director shall advise the appropriate municipality of any pending applications. Upon timely receipt of a duly signed written objection to the operation of the non-commercial premises, which must be received within 30 days of the notification to the municipality, the Director will afford a hearing to all parties and notify the owner of the non-commercial premises and the objector of the date, hour and place thereof;

3. The owner of the non-commercial premises shall keep records of permittees using the facility to produce malt alcoholic beverages and wines. These records are to be retained for a period of two years and must be available for inspection by the Director, the Director's authorized deputies, inspectors and investigators, and by any officer defined by N.J.S.A. 33:1-1p; and

4. Representatives of the non-commercial premises shall not provide physical assistance to, or on the behalf of, permittees in the production or bottling of malt alcoholic beverages and wines, nor storage other than that necessary to manufacture the malt alcoholic beverages or wines.

13:2-12.4 Ineligibility of [minors] **persons under the legal age**

No permit shall be issued to any person under 21 years of age.

13:2-12.6 Number of permits per year

[Not] **No** more than one **malt alcoholic beverage and one wine** permit shall be issued to any individual during any calendar year.

SUBCHAPTER 13. EXECUTION OF QUESTIONNAIRE BY STATE LICENSEES, AND THEIR PRINCIPALS AND EMPLOYEES

13:2-13.1 Execution of questionnaires by State licensees and principals

Every person who, individually or as a member of a partnership, holds a manufacturer's, wholesaler's, public warehouse, warehouse receipts, broker's or transportation license (except railroad carriers, but not excepting their affiliated or subsidiary transportation companies engaged in transporting alcoholic beverages) shall execute a questionnaire, on a form [promulgated] **prescribed** by the Director. In addition, every person who is an officer, director or holder of more than one percent of the stock of a corporation holding any such license, shall execute a questionnaire, [in] **on** a form prescribed by the Director.

13:2-13.2 Execution of questionnaires by employees of State licensees; exemptions

(a) Every person employed by or connected in any capacity whatsoever with the alcoholic beverage business conducted in this State by the holder of any license specified in N.J.A.C. 13:2-13.1 shall execute a questionnaire, on a form [promulgated] **prescribed** by the Director.

(b) This requirement shall not apply to:

1.-2. (No change.)

3. Stenographers, telephone operators, clerks, office [boys] **personnel** and other employees who do not handle any alcoholic beverages and have no [voice] **direct or substantive role** in the conduct of the licensee's alcoholic beverage business**;** [in this State]; **or**

[4. A nonresident banker or other creditor who has loaned money to a licensed corporation and who becomes a director thereof but has no active interest in the conduct of the corporation's business in this State; or]

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[5.]**4.** Any person whose only connection with a licensed corporation is that of registered or authorized agent for the service of process.

SUBCHAPTER 14. EMPLOYMENT BY LICENSEES OF A PERSON FAILING TO QUALIFY AS A LICENSEE

13:2-14.2 Minor's employment permit; fees

(a) No licensee, [(]except a retail licensee [conducting] **operated in conjunction with** a bona fide hotel or public restaurant,[)] shall [employ] **allow, permit or suffer the employment of** any person under the age of 18 years[, nor shall such licensee allow, permit or suffer the employment of any such person], in or upon the licensed premises, unless such person [shall have obtained] **obtains** an employment permit from the Director of the Division of Alcoholic Beverage Control no later than 10 days from commencement of employment[,] or **unless** the licensee [shall have had issued by the Director of the Division of Alcoholic Beverage Control] **holds** a blanket employment permit issued **by the Director** pursuant to N.J.A.C. 13:2-14.4.

(b) The fee for an individual permit is $10.00 per [annum, or any part thereof] **calendar year**.

13:2-14.3 Permit; age restrictions

(a) No **individual** permit shall be issued to **and no blanket permit shall cover** any person under the age of 16 years except:

1. [caddies, pinboys] **caddies, pinsetters** or similar temporary or [transient] **seasonal** type employees as the Director may deem appropriate upon a showing of good cause[,] and [further except persons]

2. Persons employed by a plenary or limited retail distribution licensee[,]**;** [which persons shall be no younger than] **such licensee may not employ any person under** 15 years of age.

13:2-14.4 Blanket minors' employment permit

(a) A blanket minors' employment permit may be issued by the Director to a licensee to authorize the employment of persons disqualified by reasons of age, who are employed by the licensee as caddies [or pinboys] **pinsetters**, similar temporary or [transient] **seasonal** employees as the Director may deem appropriate upon a showing of good cause, and such persons covered by the licensee's blanket minors' employment permit need not hold or apply for individual employment permits.

(b) The fee for the blanket employment permit shall be based upon the number of anticipated employees to be hired under the permit, but shall not exceed $500.00 per [annum] **calendar year**.

13:2-14.6 Application for a rehabilitation employment permit; temporary work letter

(a) Any person convicted of a crime involving moral turpitude may apply to the Director, in the manner and form prescribed by the Director, for a rehabilitation employment permit. Whenever that application is made and it appears to the satisfaction of the Director that such person's employment in the alcoholic beverage industry will not be contrary to the public interest, the Director may, in [his or her] **the exercise of sound** discretion, issue such employment permit.

(b) Upon the proper filing of an application and proof of promised employment, the Director may, in [his or her] **the exercise of sound** discretion, issue the applicant temporary work letters not to exceed 90 days at any one time, authorizing employment upon a specified licensed premises pending determination on the application for a permit.

(c) A Temporary Work Letter may be issued if the applicant demonstrates to the Director's satisfaction, that the applicant has behaved in a law abiding manner and has not engaged in and will not participate in any conduct detrimental to the integrity of the alcoholic beverage industry or the public interest.

13:2-14.7 Rehabilitation employment permit; duration; types; fees

(a) (No change.)

(b) Rehabilitation employment permits shall consist of the following types:

1. (No change.)

2. Limited employment permit: This permit shall allow the holder thereof to be employed by any class license in any non-managerial capacity, [except that the holder may not sell, serve or deliver any alcoholic beverages] **and may allow the holder to sell, serve or deliver alcoholic beverages.**

(c) The fee for either type of rehabilitation employment permit shall be $100.00 per [annum] **annually**, payable on the date of application.

13:2-14.8 Restrictions upon limited rehabilitation employment permittee

No licensee shall allow, permit or suffer the holder of limited rehabilitation employment permit to act in a managerial capacity with respect to the licensed business[,] or **to** sell, serve or deliver any alcoholic beverage **if the limited permit so prohibits**; nor shall [any] **the** holder of a limited rehabilitation permit engage in any [such] activity **prohibited by the permit**.

13:2-14.9 Termination of employment of disqualified person

No licensee shall [continue to] employ in any manner whatsoever on the licensed premises any criminally disqualified person [after] **upon the withdrawal or denial of** the application of such person for an **Rehabilitation Employment Permit** [employment permit has been withdrawn or denied,] or [the employment permit or temporary work letter has been cancelled, suspended, revoked, or has expired] **upon the cancellation, suspension, revocation or expiration of a Rehabilitation Employment Permit or a Temporary Work Letter**.

13:2-14.11 Amendment of application

Whenever any change shall occur in any of the facts set forth in the application for **a** permit, the permittee shall file with the Director a notice in writing of the change within 10 days after its occurrence.

SUBCHAPTER 15. REMOVAL OF STATUTORY DISQUALIFICATION

13:2-15.2 Petition; contents

The petition for removal of disqualification shall be in verified form accompanied by payment of a filing fee of [$25.00] **$100.00**. The petitioner shall be required to submit a set of fingerprints and a recent color passport photograph (two inches by two inches) with said application, as well as any fingerprinting processing fees attendant thereto.

13:2-15.4 Removal of disqualifications; causes

(a) The Director may, in the exercise of [his or her] **sound** discretion, enter an order removing the disqualification, if [he or she] **the Director** is satisfied from the petitioner's testimony, the witnesses produced or the investigative record[,] that:

1. At least five years have elapsed from the later of the date of conviction or release from incarceration;

2. The petitioner has [conducted himself or herself] **behaved** in a law-abiding manner during such period; and

3. [His or her] **The petitioner's** association with the alcoholic beverage industry will not be contrary to the public interest.

(b) Any person, who applies for and is denied the removal of a disqualification for any reason, may not re-apply for a period of up to five years from the date of final administrative or judicial action, whichever is later, regarding the subject application. The Director shall set the period of time during which a disqualified person may not re-apply in the Order denying the disqualification removal and shall specify the reasons therefor.

SUBCHAPTER 16. SOLICITOR'S PERMIT

13:2-16.6 Application for permit; photograph and fingerprints; **affidavit of compliance with the Alcoholic Beverage Control Act**

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

(d) Applications for the issuance of a solicitor's permit shall be accompanied by the applicant's affidavit, on a form prescribed by the Director, attesting to compliance with the Alcoholic Beverage Control Act. Such affidavit shall specifically state that the applicant has read, understands and promises not to violate the Alcoholic Beverage Control laws and regulations, including those which relate to:

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1. Tied House Restrictions (pursuant to N.J.S.A. 33:1-43 and N.J.A.C. 13:2-23.25);

2. The Retail Cooperative Purchase Regulation (pursuant to N.J.A.C. 13:2-26); and

3. The Trade Member Discrimination, Marketing, and Advertising Regulation (pursuant to N.J.A.C. 13:2-24.)

SUBCHAPTER 17. APPEALS

13:2-17.1 Notice and petition of appeal; contents; fee

All appeals from the actions taken by a municipal issuing authority concerning the issuance, denial, renewal, transfer, suspension or revocation of a retail license shall be commenced by the filing, in duplicate, of a notice and petition of appeal to the Director of the Division of Alcoholic Beverage Control. The petition shall set forth the identity of the parties involved in the appeal, the subject matter of the appeal, the date and the action of the issuing authority from which the appeal is taken, the relief sought, the grounds therefor and a fee of [$50.00] **$100.00** payable to the Director, Division of Alcoholic Beverage Control.

13:2-17.5 Jurisdiction

Upon filing of the notice and petition of appeal and answer, the Director shall determine whether the case is contested. If the [Director determines that the] case is **determined to be** contested, [he or she] **the Director** shall [either] file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-[5.1]**8** or retain it under the provisions of N.J.S.A. 52:14F-8.

13:2-17.9 Extension of license term

Upon the filing of an appeal from the denial of an application for renewal of a license, or the failure to act upon such renewal application within the time set forth in N.J.A.C. 13:2-2.10(b), the Director may, at the time of the filing of the appeal, in [his or her] **the exercise of sound** discretion, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the license pending the return of the order to show cause. If it shall appear that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would otherwise result, the extension of license, subject to such conditions as may be imposed, shall be continued pending a final determination of the appeal, or the expiration of the license term, whichever comes sooner.

SUBCHAPTER 18. PETITION PROCEEDINGS; DISCRIMINATION AGAINST WHOLESALERS

13:2-18.2 Filing and serving petitions

(a) The petitioner shall file with the Director, Division of Alcoholic Beverage Control, an original and copy of a Verified Petition setting forth the identity of the parties, the subject matter of the petition, the identity **and the brand registration number for each** of the product(s) involved, [brand registration filings for the products,] the relief sought, the grounds therefor and such other matters required under N.J.S.A. 33:1-93.6 et seq.

(b) (No change.)

(c) The petition shall be accompanied by a filing fee of $100.00 payable to the Director, Division of Alcoholic Beverage Control.

13:2-18.4 Interlocutory relief

(a) The petitioner may apply to the Director [for] **by verified petition and request** interlocutory relief. [by order to show cause, accompanied by the] **The** verified petition [alleging] **must allege** that the petitioner will probably suffer substantial and irreparable injury before final determination of the proceeding unless interlocutory relief is granted.

(b) If it appears that the petitioner will probably suffer immediate, substantial and irreparable injury before a hearing can be held on the return date of the order to show cause, the Director may enter an ex parte order granting ad interim relief, provided the respondent is granted the right to move, on two days['] notice, to dissolve or modify said order. **Ad interim relief can include an Order which requires, among other things, that the respondent sell designated product(s) to the petitioner upon terms as specified by the Director.**

(c) Upon return of the order to show cause, the Director may grant interlocutory relief if it appears that a substantial question of law or fact has been raised and that the petitioner will probably suffer substantial and irreparable injury without such relief before final determination of the proceeding.

13:2-18.6 Jurisdiction

Upon the filing of the Verified Petition and answer, the Director shall determine whether the case is contested. If [the Director determines that] the case is **determined to be** contested, [he or she] **the Director** shall either file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-[5.1]**8** or retain it under the provisions of N.J.S.A. 52:14F-8.

13:2-18.7 Public hearing

All proceedings shall be heard at [the office of the] **a location designated by the** Division of Alcoholic Beverage Control or [designated location] by the Office of Administrative Law, whichever agency is hearing the case.

13:2-18.8 Hearing procedure

Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern [the] **its** conduct [of the case].

SUBCHAPTER 19. DISCIPLINARY PROCEEDINGS

13:2-19.6 Jurisdiction and hearing procedure

(a) (No change.)

(b) In uncontested cases before the Division, written argument as to penalty may be submitted to the Director within 10 days after entry of the plea. No oral argument may be had before the Director[,] unless[, on his or her own motion,] the Director decides to hear oral argument and notifies the parties or their attorneys of the time and place fixed therefor.

13:2-19.7 Revoked license: licensee inability to work; transfer prior to revocation

(a) A revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate licensee ineligible to hold or receive any other license, of any kind or class, or work, in any capacity, in any licensed premises, for a period of two years from the effective date of such revocation. A second revocation shall render the licensee and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate licensee ineligible to hold or receive any such license, or work, in any capacity, in any licensed premises, at any time thereafter.

(b) In the event that a license is transferred to another person or entity prior or a change in corporate structure has occurred, prior to the time at which the license has been revoked, the Director shall review the facts of the revocation proceedings. The Director shall thereafter determine whether or not the holders and owners (either direct or indirect) of the license at the time the violations(s) occurred; at the time of the license was ordered revoked; or any interim times, either allowed, permitted or suffered the unlawful conduct or knew or should have known of the effects of a license revocation or should be sanctioned for any other sound reasons. In the exercise of sound discretion, the Director may order that any or all of such holders and owners be statutorily disqualified pursuant to the terms of N.J.S.A. 33:1-31 and N.J.A.C. 13:2-19.7(a).

SUBCHAPTER 20. TRANSPORTATION OF ALCOHOLIC BEVERAGES BY LICENSEES; INSIGNIA

13:2-20.2 Transportation by retail licensee; delivery slip; **emergency delivery**

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

(c) It shall be an affirmative defense, to a charge of violating N.J.A.C. 13:2-20.1, where the licensee satisfactorily demonstrates that:

1. The licensee owned or leased a properly permitted vehicle;

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2. An emergency situation arose which prevented the delivery from being made in the properly permitted vehicle; and

3. The delivery was, in all other respects, made in accordance with the provisions of N.J.A.C. 13:2-20.2(a).

13:2-20.3 Transportation by State licensee with retail privileges; delivery slip or route card

(a) (No change.)

(b) The holder of a New Jersey Plenary or Farm Winery license with retail privileges may authorize the shipment of wine purchased in person at retail on the licensed premises **or ordered by mail or telephone (but for mail or telephone orders only if the licensee has a signed authorization by the person placing the order)** to a destination within this State by a parcel delivery service subject to the following terms and conditions:

1.-3. (No change.)

4. The wine shall be shipped as a restricted delivery and may be delivered only to the residence of the person who placed the order. It is the duty of personnel delivering the wine for a licensee in accordance with N.J.S.A. 33:1-28.1 et seq. and this subsection to seek to determine that, at the time of delivery of wine, the party signing a delivery receipt is of legal age to purchase and consume alcoholic beverages.

(c) (No change.)

13:2-20.6 Application; fees

(a) Application for transit insignia shall be filed with the Director upon a prescribed form accompanied by the full fee of [$25.00] **$50.00** for each insignia, in cash, money order or [certified] check payable to the order of the Division of Alcoholic Beverage Control.

(b) Application for special transit insignia, which may be issued for passenger type vehicles and consists of a sticker that is less conspicuous than a transit insignia, shall be filed with the director upon a prescribed form accompanied by the full fee of [$25.00] **$50.00** for each permit, in cash, money order or [certified] check payable to the order of the Division of Alcoholic Beverage Control.

(c) Application for transportation license insignia shall be filed with the director upon a prescribed form and shall be issued at a cost of $20.00 for each insignia, in cash, money order or [certified] check payable to the order of the Division of Alcoholic Beverage Control.

1. (No change.)

2. The parcel delivery service must first be licensed by the Director. Application for licensure shall be made on a form to be provided by the Division.

3. An invoice must be attached to every package stating the purchaser's name, address, destination, quantity of wine being shipped and place of purchase. A copy of the original invoice must be made available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. for a period of one year at the office of the licensee.

13:2-20.11 Duty of personnel delivering alcoholic beverages to consumers

It is the duty of personnel delivering alcoholic beverages to consumers to seek to determine that, at the time of delivery of product, the party signing a delivery receipt is of legal age to purchase and consume alcoholic beverages. Failure to carry out this duty by the employee shall be considered a violation and is grounds for the suspension or revocation of the employer's license.

SUBCHAPTER 21. TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO, THROUGH OR OUT OF THE STATE

13:2-21.2 [Transportation] **Interstate transportation** for personal [consumption] **use**; amount limitation; permit

(a) Alcoholic beverages intended in good faith for personal [consumption] **use** and not for sale may be transported into this State from a point outside New Jersey by any person in a vehicle under his control, without any transportation license or permit, to the extent permitted by N.J.S.A. 33:1-2 that is, not exceeding one-fourth barrel or one case containing not in excess of 12 quarts in all, of beer, ale or porter, and one gallon of wine, and two quarts of other alcoholic beverages within any consecutive period of 24 hours.

[(b) Alcoholic beverages intended in good faith for personal consumption and not for sale may be transported between points within this State by any person in a vehicle under their control to the extent permitted by N.J.S.A. 33:1-2 that is, not exceeding one-half barrel, or two cases, containing not in excess of 24 quarts in all, of beer, ale or porter, and five gallons of wine and 12 quarts of other alcoholic beverages within any consecutive period of 24 hours.]

[(c) Transportation] **(b) Interstate transportation** of alcoholic beverages intended in good faith for personal [consumption] **use** in excess of the limits set forth in this section is prohibited; unless the consumer:

[1. Acquires from the Division a special permit to authorize the intrastate transportation in that individual's vehicle for a fee of $5.00 as set forth in N.J.S.A. 33:1-2, or]

[2.]**1.** Has the alcoholic beverages [delivered intrastate] **transported by** a New Jersey licensed alcoholic beverage transporter; or

[3.]**2.** Acquires from the Division a special permit to authorize the interstate transportation for a fee of [$5.00] **$25.00** as set forth in N.J.S.A. 33:1-2. No such permit shall be issued until the applicant establishes that there has been payment of all applicable New Jersey Alcoholic Beverage Taxes.

13:2-21.4 Limited transportation permit

(a) (No change.)

(b) Application for a limited transportation permit shall be made to the Division on a form prescribed by the Director[, in duplicate,] accompanied by a fee of $400.00.

(c) A limited transportation permit has a term of one year terminating on September 30, unless sooner canceled by the Director.

[1. Those limited transportation permits and the corresponding limited transportation permit insignia which have been issued with an expiration date of June 30, 1993 shall be and are extended until September 30, 1993.]

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

13:2-21.5 Emergency trip permit

(a) (No change.)

(b) An emergency trip permit shall authorize the delivery into or out of the State for a particular singular shipment identified in the permit from a specified source of origin to a specified destination. **The permit shall remain in effect for the duration of the trip, or for 24 hours from the time of issuance, whichever period is longer.**

(c)-(f) (No change.)

SUBCHAPTER 22. LICENSEE TRAINING AND CERTIFICATION

13:2-22.1 Licensee training program established

All holders of [a] plenary or limited retail distribution licenses issued under the provisions of N.J.S.A. 33:1-12 shall successfully complete educational training courses at such times, under such conditions, and with identified consequences for noncompliance, as are hereinafter set forth in this subchapter.

13:2-22.2 Requirements for successful completion; time for completion

(a) All holders of [a] plenary or limited retail distribution licenses at the time this subchapter becomes operative shall successfully complete an initial educational training program within nine months of [the operative date of this subchapter] **March 9, 1994**. Successful completion shall entail attendance during the entire training program and satisfactory participation in program's group exercise and questioning activities.

(b) [Any person or entity that thereafter acquires] **Whenever** a plenary or limited retail distribution license **is acquired** as a newly issued license, or by an approved person-to-person transfer of license, or any currently existing plenary or limited retail distribution license held by a corporation [which] is subject to a change of $33^1/_3$ percent or more of its corporate stockholders, **individuals as specified in N.J.A.C. 13:2-22.3** shall be required to attend and successfully complete an initial educational training program within nine months of **acquiring** the new license [issuance, the approval of a person-to-person license transfer application

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or the change of 33 1/3 percent or more of the stockholdings in a corporate license] **or 33 1/3 percent or more interest in such license.**

(c) All holders of plenary or limited retail distribution licenses that have successfully completed an initial educational training program shall be required to **have appropriate individuals** attend and successfully complete supplemental continuing educational training programs **if** determined necessary by the Director based upon modifications and changes in the law, regulations, policy or societal conditions. The schedule for supplemental training shall be set forth in the Alcoholic Beverage Control Bulletin and further communicated to all affected licensees.

13:2-22.3 Individuals required to attend

(a) One or more of the following individuals shall be required to attend the educational training programs on behalf of the plenary or limited retail distribution licensee:

1. For licenses held [in the name of] **by** an individual as a sole proprietorship, or for licenses held [in the name of] **by** a partnership, the required attendee shall be the individual owner of the license, or at least one of the partners**, respectively, if** such owner or partner is actively engaged in the operation or control of the business[, respectively].

2. For licenses held by a corporation, the required attendee shall be at least one of the corporate officers or a stockholder owning at least 25 percent of the corporate stock, [who shall be] **if such person is** actively engaged in the operation or control of the business.

3. Where any licensee designates a manager on its license application, the required attendee shall also include that individual, in addition to the persons identified in (a)1 or (a)2 above.

4. Where an owner, partner or holder of 25 percent or more of the corporate stock, is not actively involved in the operation or control of the business, then such license must have at least one individual designated as a manager as disclosed on the license, which person must attend the training.

5. Where any licensee holds more than one license subject to the requirements of this subchapter, at least one person for each separate license must attend and successfully complete the training.

[4.]**6.** In addition to the above, any licensee may register as an attendee, on a space available basis, any other officer, stockholder, clerk or other employee actively engaged in the operation or control of the licensed business.

13:2-22.6 Training program curriculum

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

(c) The curriculum for the supplemental training program shall include, but [is] not **be** limited to, any changes in the Alcoholic Beverage Control Act or other related laws affecting retail licensed businesses, new or amended regulations of the Division of Alcoholic Beverage Control, administrative and judicial policy changes, prevailing market or societal conditions and reinforcement or further expansion of matters addressed in the initial training program or revisions thereto.

13:2-22.8 Certification of educational training or order of deferment

(a) Upon the satisfactory completion of an initial or **any** supplemental educational training program required under this subchapter, the holder of a plenary or limited retail distribution license shall receive from the Director, Division of Alcoholic Beverage Control, a Certificate of Educational Training. The certificate shall include the date and location of the completed training program, the name of the attendee or attendees on behalf of the licensee, and the licensee's name, address and license number. The Certificate of Educational Training may be displayed on the licensed premises and must be made available to the licensing issuing authority at the time of any application for renewal of the license.

(b) Any holder of a plenary or limited retail distribution licenses who [submits that it will be] **is** unable to attend an initial or supplemental training program within the required time period, may apply to the Director, no later than 30 days before the expiration of the requisite training time period, for a deferment of the requirement for attendance in the educational program. The request for deferment shall be made to the Director on a form to be [promulgated] **prescribed** by the Director and accompanied by a non-refundable processing fee of $25.00. If the Director is satisfied that there is good cause for the deferment, the Director shall issue an Order of Deferment of the training requirement, subject to conditions thereon as may be appropriate.[Any Order of Deferment shall not exceed six months.]

13:2-22.9 Sanctions for noncompliance

(a) (No change.)

(b) False or misleading representations by a licensee in its petition for a deferment are grounds for suspension or revocation of its license.

[13:2-22.10 Subchapter operative date

This subchapter shall be operative on the date of the Director's contracting with a nonprofit educational organization pursuant to N.J.A.C. 13:2-22.5. Notice of such operative date shall be published in the New Jersey Register and added to this subchapter where necessary through a Notice of Administrative Change.]

SUBCHAPTER 23. CONDUCT OF LICENSEES AND PERMITTEES AND USE OF LICENSED PREMISES

13:2-23.7 Prohibition against lottery and gambling; exceptions

(a) No licensee shall engage in or allow, permit or suffer in or upon the licensed premises:

1.-4. (No change.

5. Nor shall any licensee possess, have custody of, or allow, permit or suffer in or upon the licensed premises **any gambling paraphernalia including, but not limited to,** any slip, ticket, book, record, document, memorandum or other writing pertaining in any way to any lottery, pool-selling, bookmaking or unlawful game or gambling of any kind.

(b) (No change.)

13:2-23.8 Eastern Standard Time change

(a) On the first Sunday of April of each year, at 2:00 A.M., the clocks in each licensed premises will be advanced one hour in observance of Eastern Daylight Savings Time.[In any municipality having a closing hour later than 2 A.M., the official time will then become 3 A.M. and the hours of sale will be calculated accordingly.] **The official time will then become 3:00 A.M., and in any municipality having a closing time later than 2:00 A.M., the remaining hours of sale will be calculated accordingly.**

(b) On the last Sunday of October of each year, at 2:00 A.M., the clocks in each licensed premises will be turned one hour back in observance of Eastern Standard Time.[In municipalities having a closing hour later than 2 A.M., the clocks will be immediately returned to 1 A.M. and hours of sale will be calculated accordingly.] **The official time will be 1:00 A.M., and in any municipality having a closing hour later than 2:00 A.M., remaining hours of sale will be calculated accordingly.**

(c) In either case, (a) or (b) above, licensed premises having closing hours of 2:00 A.M. or earlier, will be unaffected.

13:2-23.12 Receiving alcoholic beverages from prohibited source

(a) No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director. [of the Division of Alcoholic Beverage Control].

(b) The purchase of alcoholic beverages by one retailer from another and sale of alcoholic beverages by one retailer to another are prohibited; provided, however, that the passage of title in any alcoholic beverages from transferor to transferee of a license may be authorized by special permit obtained from the Director [of the Division of Alcoholic Beverage Control].

13:2-23.13 Maintaining copies of current license certificate; application, list of employees; availability for inspection

(a) No licensee shall conduct the licensed business unless:

1.-2. (No change.)

3. A list, on a form [promulgated] **prescribed** by the Director [of the Division of Alcoholic Beverage Control],containing the names and addresses of, and required information with respect to, all persons currently employed on retail licensed premises, is kept on the licensed premises.

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(b) Such application copy and such list shall be available for inspection by the Director, [his or her] **the Director's deputies**, inspectors and investigators, and by any officer defined by N.J.S.A. 33:1-1(p).

(c) A licensee shall be deemed to have complied with the requirements of (a)(3) above if the information required to be kept on the licensed premises is contained in a computer system, accessible from the licensed premises, and the information can be immediately produced at the request of anyone authorized in (b) above to request such information.

13:2-23.16 Prohibited promotions

(a) [No] **Except for consumer alcoholic beverage tastings or tasting dinners conducted in accordance with N.J.A.C. 13:2-37, no** licensee or registrant privileged to sell or solicit the sale of alcoholic beverage within this State shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

1. Offers to the public at large unlimited availability of any alcoholic beverage for a set price; or

2. Offers to a patron or consumer a free drink, gift, prize or anything of value, conditioned upon the purchase of an alcoholic beverage or product, except:

i. [branded] **Branded** or unique glassware [of] **or** souvenirs in connection with a single purchase, or

ii. [consumer] **Consumer** mail-in rebates offered by alcoholic beverage producers or importers in accordance with N.J.A.C. 13:2-24.11; [or]

iii. In off-premises promotions, where the licensee or registrant provides a thing of value or an alternate means of entry to obtain a thing of value that is not unduly burdensome; or

iv. In off-premises promotions, case discounts offered on the same or on different alcoholic beverages, as permitted by N.J.A.C. 13:2-24.9; or

3. Requires or allows a consumer to prepurchase more than one drink or product at a time via tickets, tokens, admission fees, two for one, or the like, as a condition for entry into a licensed premises or as a requirement for service or entertainment thereon.

(b) A prohibited promotion is one that offers any prize, gift or award which consists of alcoholic beverages or coupons or gift certificates which may be redeemed for alcoholic beverages. A coupon or gift certificate, other than a certificate purchased by a consumer for an amount equal to the dollar value of the certificate, shall expressly state that the certificate shall not be applied toward the purchase or consumption of alcoholic beverages.

(c) No prize or promotion shall be given to, nor shall any contest be open to, any person under the legal age to purchase or consume alcoholic beverage, any supplier, wholesaler, distributor or retailer; or affiliates, employees or members of the immediate family or household of any such persons or entities.

13:2-23.21 Restrictions upon storage of alcoholic beverages

No licensee shall store any alcoholic beverage except at his licensed premises, or at a public warehouse licensed under the alcoholic beverage law, or at other premises pursuant to special permit first obtained from the Director. [of the Division of Alcoholic Beverage Control, provided, however, that nothing] **Nothing** herein [contained] shall prohibit the storage of alcoholic beverages by a licensee upon the formerly licensed premises for a period not exceeding five days [subsequent to] **after** the effective date of the transfer of the license to other premises or for a period not to exceed 72 hours following delivery at the licensed premises of **alcoholic beverages purchased, as part of a cooperative order by** a fellow member of a cooperative purchasing agreement made pursuant to N.J.A.C. 13:2-26.

13:2-23.26 Fingerprinting requirements

No licensee shall employ or have connected with him in any business capacity whatsoever any person who refuses to submit himself for fingerprinting when required to do so by the Director [of the Division of Alcoholic Beverage Control] or the municipal license issuing authority concerned.

13:2-23.29 Detention of evidence; search of licensed premises

By the acceptance of the license, the licensee consents to the detention, as and for evidence, of any physical matter, including alcoholic beverages, found on the licensed premises or during the course of any investigation, inspection or search of the licensed premises being conducted by the Director [of the Division of Alcoholic Beverage Control], [his or her] **the Director's** deputies, inspectors or investigators or by any officer as defined by N.J.S.A. 33:1-1(p).

13:2-23.30 Prohibition against hindering an investigation

No licensee shall, directly or indirectly, fail, on demand, to produce, exhibit or surrender to the Director [of the Division of Alcoholic Beverage Control], [his or her] **the Director's** deputies, inspectors or investigators and any officer as defined by N.J.S.A. 33:1-1(p), any and all matters and things which the Director or other issuing authority is authorized or empowered to investigate, inspect or examine; nor shall any licensee, directly or indirectly, fail to facilitate, or hinder, delay or cause the hindrance or delay, of any investigation or inspection of the licensed business or of the licensed premises or of any search thereof by the Director,[his or her] **the Director's** deputies, inspectors or investigators or by any officer as defined by N.J.S.A. 33:1-1(p).

13:2-23.31 Law enforcement officers; ownership prohibition; employment restrictions

(a) (No change.)

(b) No licensee shall employ or have connected with him in any business capacity whatsoever any such officer or person, except that:

1. (No change.)

2. A licensee, upon prior written application to and written approval by the Director [of the Division of Alcoholic Beverage Control], may employ a regular police officer, peace officer or other person whose powers and duties include the enforcement of the Alcoholic Beverage Law(other than an officer employed by the Division of State Police) provided that such officer shall not be employed in a jurisdiction in which the officer is officially employed and further provided:

i.-iv. (No change.)

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

13:2-23.32 Books of account

(a) All licensees shall have and keep, **for an unlimited period of time,** a [true] **permanent** book or books of account in the English language [wherein there shall be entered] **which shall truly and accurately contain** a record of all moneys invested in the licensed business, **including loans**, [and] the source of all such investments[,] **and the disposition of such investments** for an unlimited period of time[; and].

(b) **All licensees shall maintain** for a period of five years, a record of all money[s] **or any other thing of value** received in the ordinary course of business[;] **or received outside** [a record of the source of all moneys received other than in] the ordinary course of business[;], a record of all money[s] expended from such receipts; [and] the name of the person receiving such money[s] and the purpose for which such expenditures were made.

(c) All books and records pertaining to [such] investments, receipts or expenditures shall be made available for inspection, upon demand, by the Director [of the Division of Alcoholic Beverage Control] and the other issuing authority [and by his or her] or [its] **the Director's** deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1(p).

SUBCHAPTER 24. TRADE MEMBER DISCRIMINATION, MARKETING AND ADVERTISING

13:2-24.6 Required records

(a) Every licensee or registrant privileged and intending to sell alcoholic beverages to retailers in this State shall maintain upon its licensed premises for a period of three years the following records:

1.-2. (No change.)

3. A "Current Price List", maintained in a separate book or ledger, containing:

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i. Prices, inclusive of **per unit costs,** all discounts, allowances and differentials and other terms of sale, at which all products are offered for sale to retailers during the calendar month following filing; [and]

ii. The correct brand or trade name of the product, its nature and type, **the brand registration number according to N.J.A.C. 13:2-33.1,** size and age and proof of alcoholic content when stated on the label, the standard number of unit containers per standard case and the capacity of each unit container[.]**; and**

iii. Promotional point-of-sale items, holiday combination gift, combination product packages or other retailer incentive programs.

4. The Current Price List shall be filed in **a format prescribed by the Director** with the Division of Alcoholic Beverage Control no later than the 15th day of each calendar month and shall become effective the first day of the following calendar month and remain effective for that month.

5. The prices contained therein shall be filed independently by each individual filer, and no amendments or changes (except upon approval of the Director to correct bona fide clerical errors) shall be made therein prior to filing of the next monthly price list. **Requests for additional amendments may be considered pursuant to N.J.A.C. 13:2-19.**

6. No manufacturer, supplier or wholesaler shall offer for sale, sell or deliver to any retailer and no retailer shall accept delivery **of anything** from any manufacturer, supplier or wholesaler of any alcoholic beverage upon terms other than those set forth in the seller's "Current Price List".

7. The Current Price List shall be a public record and nothing herein shall preclude any licensee selling alcoholic beverages to retailers from providing it directly to retailers by [mail, through sales personnel or through publication in trade journals] **any means. Any re-publication of the filed Current Price List must be published in its entirety unless conspicuously noted otherwise.**

13:2-24.7 Marketing initiatives

Subject to the foregoing provisions of this subchapter, a licensed [or registered] manufacturer, supplier, importer, wholesaler or distributor may furnish or provide advertising or promotional materials to any retail licensee[,]**.** [except that] **Such licensees may provide product** samples [may be provided] to retailers[,] and **make** donations of alcoholic beverages [made] to qualified industry trade organizations **and bona fide charitable organizations**, only within the terms and conditions of a special permit first obtained from the Director, issued upon a petition establishing and defining its need and use and verifying that all taxes have been paid [thereon].

13:2-24.9 Combination and tied sales

(a) [Notwithstanding other provisions of this subchapter, no] **No** licensee shall sell or offer to sell any alcoholic beverage product upon terms that permit purchase of that product, by size and price, only when purchased in conjunction with a different product or the same product in a different size.

[(b) Except for sales to retailers of malt alcoholic beverages, no wholesale licensee shall offer to sell or sell any alcoholic beverage product in combination with another product. For purposes of this subsection, a sale of products which are identical, except for size, in mixed lots (a mixed size sale), and the sale of distillers' and vintners' packaged holiday and gift merchandise pre-packaged as a unit are not combination sales.]

(b) Subject to the provisions of N.J.S.A. 33:1-12, a plenary retail consumption licensee and plenary retail distribution licensee, notwithstanding a local ordinance to the contrary, may sell alcoholic beverages in combination with packaged holiday merchandise prepackaged as a unit with other suitable objects as gift items to be sold only as a unit.

[(c) Subject to N.J.S.A. 33:1-12, nothing herein shall preclude a retail licensee from selling or offering for sale any product in combination with another product at a single unit price, providing that such unit price shall exceed the cost of the combined products and the individual unit price of each combined product is provided in advertising and shelf pricing.]

13:2-24.10 Advertising and consumer protection

(a) No manufacturer, importer, registrant, wholesaler, distributor or retailer shall include in any advertising material or in any advertisement, directly or indirectly, any statement, illustration, design, device, name, symbol, sign or representation that:

1. Is false or misleading;

2. Is obscene **or lewd**;

3.-7. (No change.)

13:2-24.11 Manufacturers' rebates and coupons

(a) Subject to the provisions of this section, a manufacturer, distiller, blender and rectifier, brewer, vintner, or any importer may offer mail-in rebates or refunds of a portion of the purchase price of [an] alcoholic beverages directly to consumers [for the purpose of introducing or reintroducing consumers to its product(s) or for advertising, promotion or market-testing purposes].

1. (No change.)

2. Any such rebate offer shall require a form, with all the terms and conditions of the rebate offer clearly stated thereon, to be completed and mailed by a consumer who must be of legal age to purchase alcoholic beverages. A proof-of-purchase may also be required to be submitted with the form. Such forms shall be distributed to consumers via advertisements in newspapers, magazines, or circulars of general distribution; by general address mailings; by point-of-sale tear-off pads on retail licensed premises; or by neck-hangers **or other attachments** on bottles **or packaging or other similar means of distribution**; provided that such pads**,** [or] neck-hangers**, or other attachments or other similar means of distribution** shall be non-discriminatorily distributed to licensees within a targeted advertising area.[Nothing shall prohibit the directing of a rebate offer to a specific geographic area, but rebates shall be made to any New Jersey resident complying with the terms of the offer, whether or not they shall reside in the targeted advertising area.]

3.-4. (No change.)

[5. No such rebate offered in accordance with this section shall require the purchase of more than one alcoholic beverage product or the purchase of any other item or product as a condition for either obtaining a rebate or enhancing the value of a rebate.

6. Any rebate offered in accordance with this section shall be limited to one refund or rebate per household or family for any one rebate or refund program and the rebate offer form shall specifically indicate such restriction. Any manufacturer, distiller, blender and rectifier, brewer, vintner or importer offering a rebate or refund program shall maintain adequate records, or shall cause the clearinghouse processing such rebates to maintain adequate records, in order to assure compliance with the limitation of one rebate or refund per household or family as set forth herein.]

(b) (No change.)

(c) [No] **A** retail licensee [shall] **may** advertise a [lower price] **net final price** or a reduction in the price of an alcoholic beverage product or package [it is offering] **offered** for sale by reason of a manufacturer's rebate or refund**, provided that the manufacturer's rebate or refund is conspicuously displayed in the advertising**. [A retail licensee, however, may indicate in advertising that a manufacturer's rebate is being offered on a particular alcoholic beverage product or package but any such advertising must also indicate that the rebate is limited to one per household or family.]

13:2-24.12 Display services

(a) (No change.)

[(b) Every display service shall file with the Director quarterly reports on or before the 15th of January, April, July and October for the preceding calendar quarter, which reports shall identify the amounts and sources of all monies received from any licensee, permittee, registrant, supplier, importer or manufacturer of alcoholic beverages, indicate the name, address and license number of all licensees to which services were furnished; and set forth the value of the display materials furnished to or on behalf of each such licensee. Such reports shall be confidential pursuant to N.J.A.C. 13:2-29.2(a)3.]

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

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SUBCHAPTER 26. RETAIL COOPERATIVE PURCHASES

13:2-26.1 Restrictions on cooperative purchases

(a) A Class C retail licensee, as defined in N.J.S.A. 33:1-12, may join with another Class C licensee in a cooperative agreement for the purchase and transportation of alcoholic beverages, provided that such agreement and activity shall conform to the following standards:

1. [No unlicensed person or entity may participate in any management capacity nor receive any compensation in connection with the purchase or transportation of alcoholic beverages;] **The cooperative may hire employee(s) to act in an administrative or management capacity for the cooperative's purchase, storage and transportation of alcoholic beverages, provided:**

i. The employee meets with the qualification requirements of N.J.S.A. 33:1-25 and N.J.A.C. 13:2-14.5;

ii. The employee applies for and receives a permit from the Director of the Division of Alcoholic Beverage Control upon a format prescribed by the Director; and

iii. The employee has no ownership of, employment with or financial interest in a Class A, B or C license;

2. The number of Class C licensees joined in any agreement shall not exceed the largest number of plenary retail distribution licenses, as defined in N.J.S.A. 33:1-12(3)(a), issued to any one person or entity in this State at the time of the prior most recent annual renewal of such licenses[;];

3.-5. (No change.)

6. All purchases on credit through or by cooperative agreement shall be reduced to writing, signed by the wholesaler and each individual participating member of the cooperative, and be consistent with the credit provisions of N.J.A.C. 13:2-24. Such credit terms shall include adequate assurances of payment **by each individual participating member** by either the posting of a bond by the cooperative member or a provision that each member of the cooperative shall be jointly and severally liable for payment for the purchases made through the cooperative. A copy of such written agreements shall be maintained by the wholesaler in its marketing manual and by the registered buying cooperative;

7.-9. (No change.)

10. Any purchase or transfer in violation of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. or the regulations promulgated thereunder, shall be a violation by all members of the cooperative purchase agreement; [and]

11. Nothing herein shall be deemed to require the servicing of any cooperative agreement with quantity or cash discounts if there exists no corresponding justification for the differential pursuant to N.J.A.C. 13:2-24.1(b)1[.];

12. Each registered cooperative buying group may maintain a public warehouse provided that the cooperative complies with N.J.S.A. 33:1-14, the cooperative public warehouse maintains assigned space for each individual participating member, and the inventory is transferred to that space within 72 hours after delivery pursuant to N.J.A.C. 13:2-23.21. All purchases through or by the cooperative agreement must be transported to and from the warehouse consistent with N.J.S.A. 33:1-13, N.J.S.A. 33:1-28 and N.J.A.C. 13:2-20; and

13. Each registered cooperative buying group may maintain a bank account and invoice, assess and charge its members for the cost and expense, including capital and operational expenditures, of establishing, maintaining and providing services.

(b) (No change.)

SUBCHAPTER 27. LABELING AND STANDARDS OF FILL; DEPOSIT MARKED CONTAINERS

13:2-27.2 Deposit marked containers

(a) No manufacturer, supplier, importer, brand registrant, wholesale or retail licensee or permitee shall sell, distribute or market for resale to a consumer in New Jersey or purchase for resale to a consumer in New Jersey any **malt** alcoholic beverage product, **except for malt coolers,** packaged in a bottle or can marked for deposit of another state.

(b) The provisions of (a) above shall not apply where an application is received from the brand registrant of a malt alcoholic beverage which is accompanied by a certification from an appropriate officer that total shipments of such brand into the State will not exceed 3,000 barrels of 31 fluid gallons capacity or their container equivalent in the calendar year. False or misleading certifications shall be punishable by suspension or revocation of the brand registrant as well as any other penalties as provided by law.

(c) For the purposes of (a) above, "malt coolers" shall be defined as a flavored malt beverage made from a base of malt beverage and flavored with fruit juices, aromatics, essences, or other flavoring in quantities and proportions such that the resulting product possesses a character and flavor distinctive from the base malt beverages and distinguishable from other malt beverages.

SUBCHAPTER 29. RECORDS

13:2-29.1 Public records

(a) The following enumerated records required to be maintained by law or other regulation by the Director[, Division of Alcoholic Beverage Control,] shall constitute public records of the Division:

1.-6. (No change.)

13:2-29.3 Inspection, reproduction and availability of records; copying fees

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

(c) If the Director finds that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business, [he or she may permit] any citizen who is seeking to copy any individual record or report which exceeds 100 pages **may be permitted** to use his own photographic process, approved by the custodian, upon the payment of a fee of $25.00 per day.

(d) Special records such as computer printouts, tapes and discs or other computer records [associated with the Licensing Information System (ABC/LIS)] **of the Division** may be made available, in the discretion of the Director, upon payment of such special costs relating to the development and reproduction thereof, and upon such terms as shall insure their integrity and the privacy of information contained therein, when required by law.

13:2-29.4 Licensee records; storage systems and availability of records

(a) Upon written application to the Director accompanied by all relevant specifications and descriptions, the Director, in [his or her] **the exercise of sound** discretion, may approve alternate methods or locations for storage of any record required to be maintained by licensees, provided that such a record system permits access to all required records so that they are "readily retrievable" and "accurate".

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

(d) Computer systems and programs may be used to store records required to be maintained by law or other regulation if such records are retrievable within the time limits as enumerated in this section.

SUBCHAPTER 30. REGISTRATION OF STILLS

13:2-30.2 Registration form; contents

Such registration shall be upon forms [promulgated] **prescribed by** the Director designated as registry certificates, which may be obtained from the Director upon request, and which shall set forth the description and location of the still, distilling apparatus and parts thereof, and the names and address of the owner and the person having possession, control or custody thereof.

SUBCHAPTER 31. SEIZURE HEARINGS

13:2-31.2 Procedures; return of property seized

(a) Prior to final determination by the Director, claims for the return of property seized under N.J.S.A. 33:1-66 or N.J.S.A. 33:2-3 may be made to the Director by payment in cash, under protest, of the retail value of the seized property, or by the posting of a proper bond with sureties satisfactory to the Director in a sum double the retail value of the property. In lieu of such cash bond or surety bond, a claimant may institute an action for replevin against the Director in any court of competent jurisdiction according to the forms and procedure, including

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the delivery of a bond, of such court; such action to be commenced with 30 days from the seizure of such property and not thereafter. The Director may, in [his or her] **the exercise of sound** discretion, refuse to entertain any such claim for the posting of a bond to obtain return of the property seized made more than 30 days from the date of the final order of forfeiture.

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

13:2-31.3 Forfeiture **and sale** of seized property

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

(c) Claims may be made by any person having a bona fide and valid lien upon or interest in the seized or forfeited property for the recognition of the validity and priority of such lien or interest, by presenting evidence at the hearing that such claimant has acted in good faith, and had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use. The Director may require such claimant to file a verified petition setting forth in detail the facts relied upon. If the claim is established to the satisfaction of the Director, [he or she may order] the return of the property to the claimant **may be ordered** where it appears that the amount or value of such lien or interest exceeds the value of the property, subject to payment of reasonable costs of seizure and storage; or order the retention of the property for the use of the State, subject to the payment of the lien or interest less costs of seizure and storage; or order the sale of the property, subject to the payment of the lien or interest out of the proceeds of sale, after first deducting the reasonable costs of seizure and storage.

(d) Claims may be made by a common carrier whose vehicle has been seized for return of the vehicle by filing a verified petition with the Director substantiating such interest, together with a statement that claimant has acted in good faith and had no knowledge at the time of the seizure that the vehicle contained illicit alcoholic beverages. The Director may, [in his or her discretion,] if satisfied that these facts are established, order the return of the seized vehicle to the common carrier.

(e) Sale of forfeited property shall be conducted pursuant to the provisions of N.J.S.A. 52:27B-68.

SUBCHAPTER 33. PRODUCT INFORMATION FILING: BRAND REGISTRATION

13:2-33.2 Filing fees and forms

(a) Each filing of an original brand registration schedule shall be accompanied by a non-refundable fee of $[10.00] **20.00**, and each filing of an amendment to a previously filed brand registration schedule shall be accompanied by a non-refundable fee of $[7.00] **10.00**. Such fees shall be payable to the Division of Alcoholic Beverage Control.

(b) (No change.)

SUBCHAPTER 34. [(RESERVED)] **RESTRICTED BREWERY**

13:2-34.1 Application for restricted brewery license

(a) All applicants for a restricted brewery license shall comply with the application, advertising and hearing provisions of this chapter. The application shall be accompanied by a description of the intended activities to be conducted under the authority of this license. The statement shall include the following information:

1. The amount of malt alcoholic beverage intended for brewing per year;

2. The site of restricted brewery license activities (must be immediately adjacent to retail license restaurant premises);

3. The name and license number of restaurant and seating capacity;

4. The license number of any other restricted brewery license which is issued to the plenary retail consumption licensee;

5. The manner in which the malt alcoholic beverage product will be sold by the open container, for immediate consumption on the restaurant premises, or as package goods for off premises consumption; and

6. A sketch of the proposed area of the licensed premises specifically setting forth the area in which the malt alcoholic beverage product will be sold.

(b) All applicants for a restricted brewery license shall provide this Division with the following documents:

1. Proof of posting of a tax bond with the New Jersey Division of Taxation;

2. Proof of registration as a brewer with the United States Bureau of Alcohol, Tobacco and Firearms (must be registered prior to issuance of license;

3. Compliance with all State, county and/or local requirements associated with manufacturing and waste water discharge;

4. Proof of notice to local issuing authority regarding intention to operate restricted brewery; and

5. Certification from local issuing authority that applicant has present ownership of an active plenary retail consumption license operated in conjunction with a restaurant.

13:2-34.2 License fees

There is a base license fee of $1,000 which must be paid at the time of the initial application. This fee shall entitle the licensee to brew up to one thousand 31 fluid gallon barrels per year. There is an additional $500.00 fee for every additional 1,000 barrels up to a 3,000 annual barrel limit. All fees shall be payable to the Division of Alcoholic Beverage Control.

13:2-34.3 Restaurant premises

(a) For the purposes of this license, a restaurant is defined as a premises which is regularly and principally used for the purpose of providing meals to its customers and having adequate kitchen and dinning room facilities. The applicant shall submit a sketch of the restaurant premises which must be immediately adjacent to the restricted brewery. The sketch shall reflect the seating capacity of the restaurant, the menu provided to customers and the layout of the restaurant showing where the malt alcoholic beverage will be sold for off premises consumption, if any.

(b) The Director shall issue a restricted brewery license only to persons or entities who have identical ownership of an active plenary retail consumption license operated in conjunction with an immediately adjacent restaurant as defined herein. A site visit by the Division will be conducted to ensure compliance with these regulations.

(c) For purposes of this subchapter, the term "adjacent" shall include but not be limited to those premises which are entirely surrounded and enclosed within the restaurant licensed premises.

13:2-34.4 Tasting and sale for off-premises consumption

(a) A restricted brewery licensee may offer, without charge, no more than five ounces of the brewed malt alcoholic beverage for consumption on the licensed premises as a sampling of the brewed product. This sampling shall not be offered to the same customer more than once, for each malt beverage brewed on the premises, during the hours of sale on any day.

(b) In addition to the sale of brewed malt alcoholic beverage for on premises consumption, sales for off premises consumption may be conducted on the retail licensed premises.

(c) The containers in which the malt alcoholic beverage aresold for off-premises consumption shall be sealed refillable containers having labeling approved by the Division. The containers may be returned to the restricted brewery and at the time of refill shall be sealed by the licensee.

(d) Display and sale of the malt alcoholic beverages for off-premises consumption on the restaurant licensed premises shall comply with all pertinent provisions of N.J.A.C. 13:2-35.

13:2-34.5 Hearings

The Director shall hold a hearing if the governing body of the municipality in which the license will be located files a written objection with the Director. The Director shall thereafter issue the license only if such issuance will not be contrary to the public interest.

13:2-34.6 Disciplinary proceedings

Any disciplinary proceedings against a restricted brewery license shall be in accordance with N.J.A.C. 13:2-19. The institution of

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disciplinary proceedings against a restricted brewery license shall be considered separate and distinct from and shall not adversely affect the status of the plenary retail consumption license owned by the person or entity holding the restricted brewery license. However, the Director may institute disciplinary proceedings against the plenary retail consumption license when the factual basis of the violation charged involves the operation of both the plenary retail consumption license and the restricted brewery license.

SUBCHAPTER 35. SALE AND DISPLAY OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS BY CONSUMPTION LICENSEES NOT HOLDING THE BROAD PACKAGE PRIVILEGES

13:2-35.1 Definitions

(a) For the purpose of this regulation:

1.-3. (No change.)

4. A "perimeter wall" of a barroom is defined as an external, generally weight bearing wall of the barroom.

5. The "outside edge" of the cashier (package goods) sales counter is defined as the edge away from the licensee's employee who is conducting sales (that is, the edge of the counter immediately facing the customer). The counter, the walking space behind the counter, and any shelving attached to the perimeter wall (behind the counter) must fall within the five foot limitation as set out in N.J.A.C. 13:2-35.4(a)2.

SUBCHAPTER 36. REQUESTS FOR ADVISORY OPINIONS

13:2-36.1 Advisory opinions

(a) (No change.)

(b) All requests shall be sent to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625, and any request and corresponding advisory opinion may be reproduced in Bulletins issued by the Division which are publicly available upon subscription. Requests which are hypothetical in nature will not receive Division response. **All requests shall contain a certification that the requesting party is not aware that the subject matter of the inquiry is presently an issue pending in any Federal or State court or any administrative adjudicatory forum. If the requesting party is aware that the subject matter of the inquiry is an issue pending in any court or forum, the nature of the proceedings and identification of the court or forum shall be fully described in the request for the advisory opinion.**

[(c) The provisions of this section are to be considered of general applicability and may be relaxed in the discretion of the Director.]

SUBCHAPTER 37. CONSUMER ALCOHOLIC BEVERAGE TASTINGS AND TASTING DINNERS

13:2-37.1 Consumer alcoholic beverage tastings or tasting dinner events

(a) Consumer alcoholic beverage tastings or tasting dinner events may be held under the following conditions:

1. The host for an event shall hold a valid permit or actively operated license exercising the on-premise consumption privilege;

2. No event shall be conducted on a plenary or limited retail distribution licensed premises;

3. The event shall be conducted and promoted in connection with an instructional or educational program for alcoholic beverage products;

4. All alcoholic beverages sampled at the event shall be obtained from the inventory of the host licensee or Annual State permittee or, if a social affair permittee, purchased in accordance with Division laws and regulations;

5. The event is not open to the general public, but is limited to a set number of consumers by a 24 hour advance ticket purchase;

6. Servings of alcoholic beverages per person are limited to:

i. No more than five ounces of a particular malt alcoholic beverage, or naturally fermented or sparkling wine at consumer tasting dinners,

ii. No more than one and one-half ounces of a particular naturally fermented or sparkling wine or four ounces of a malt alcoholic beverage at consumer tastings or

iii. No more than one-half ounce of a particular fortified wine or distilled spirit at consumer tastings or consumer tasting dinners; and

7. Suppliers, manufacturers or wholesalers of alcoholic beverages may apply for an annual special permit to participate in consumer tasting events solely to provide educational commentary regarding the alcoholic beverages. The fee for the annual special permit for the supplier, manufacturer or wholesaler shall be $100.00 and an additional $100.00 permit for each solicitor or duly authorized representative. Ten days prior to participating in the event, the permittee shall file with the Division a consumer tasting request on a form prescribed by the Director.

SUBCHAPTER 38. LIMITATION OF HOURS FOR SALE AND DELIVERY AT RETAIL OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION

13:2-38.1 Retail package sales hours

(a) Subject to local options as expressed in the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. and [N.J.A.C. 13:2-38.3,] **except as further specified in (b) below,** no licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises, or [allow, permit or suffer] the removal of any alcoholic beverage in its original container from retail licensed premises, before 9:00 A.M. or after 10:00 P.M. on any day of the week[;]. [except that,]

(b) [whenever] **However, if** the sale of alcoholic beverages for consumption on the premises is authorized in [any] a municipality, [for the holder of a retail consumption license,] the sale, service or delivery [by any licensee with retail off-premises package goods privileges] of wine and malt alcoholic beverages in original containers for consumption off the premises shall be authorized on the same days and during the same hours [as the sale of alcoholic beverages for consumption on the premises is permitted as reflected in N.J.S.A. 33:1-40.3].

(c) In cities of the first class, no licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises or the removal of any alcoholic beverage in its original container from retail licensed premises before 9:00 A.M. or after 10:00 P.M. on any day of the week.

13:2-38.2 [Hours] **Sunday sales hours for retail distribution licensees and state beverage distributors; effect of** municipal ordinances **and State statute on sale for off-premises consumption**

(a) If a municipality has no ordinance or local law that authorizes the sale of alcoholic beverages for consumption on the premises **on Sunday**, then [such] **except as provided in (b) below, a** municipality may by ordinance authorize the sale of wine and malt alcoholic beverages in original containers **for consumption off-premises** by retail distribution **licensees** and State beverage distributor's licensees any time between the hours of 12:30 P.M. and 6:30 P.M. on Sunday, in addition to such weekday hours as may be authorized by ordinance.

(b) However, in any city of the first class which prohibits the Sunday sale of alcoholic beverages for consumption on the premises, no licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises or the removal of any alcoholic beverage in its original container from retail licensed premises, at any hour on any Sunday.

[13:2-38.3 Municipal ordinances and regulations

N.J.A.C. 13:2-38.1 shall not be construed to permit the sale or delivery of any alcoholic beverage, whether for on-premise or off-premise consumption, during hours when such sale or delivery is prohibited by an applicable municipal regulation or referendum.]

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SUBCHAPTER 39. RETURN OF ALCOHOLIC BEVERAGES; SOLICITOR'S DELIVERY

13:2-39.1 Reasons authorizing return of alcoholic beverages; inclusion in marketing manual; other required records

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

(d) The return document shall be retained for a period of one year on the licensed premises, unless the Director[, Division of Alcoholic Beverage Control,] shall have granted to the licensee written permission to keep such documents at another designated place. Licensees shall make the return documents available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

SUBCHAPTER 40. ISSUANCE OF IDENTIFICATION CARDS BY COUNTY CLERKS

13:2-40.1 Form of application; contents

Application for an identification card by **a** resident[s] of a county in New Jersey who shall have attained the legal age [for] to purchase and [consumption of] consume alcoholic beverages may be filed with the county clerk in the county wherein said applicant resides and shall be in the following form:

State of New Jersey, County of _____

IDENTIFICATION CARD

APPLICATION

TO: County Clerk of County, New Jersey. The undersigned hereby applies for an identification card as proof of age, and submits the required fee in the amount established by law.

1. Full name of applicant _____
(First) (Middle) (Last)

2. Residence address _____

3. Height _____ Weight _____
(Ft.) (In.).

Color of Eyes _____ Color of Hair _____

4. Date of Birth _____

5. Place of Birth _____
(Municipality) (County) (State)

6. Father's name _____
(First) (Middle) (Last)

7. Mother's Maiden Name _____
(First) (Middle) (Last)

8. The applicant presents one or more of the following certificates to establish his or her age (check appropriate line):

❑ Birth Certificate

❑ Naturalization Certificate

❑ Voter Registration Certificate

❑ Other (_____)

Note: Duplicate driver's licenses from any state will not be accepted as proof of age or identity.

9. The applicant submits two (2) recent color photographs, approximately 1½ inches by 1½ inches in size, of himself or herself, full face, without hat.

10. Has the applicant ever previously applied for an identification card.

_____

If so, state the details thereof _____

_____

WARNING: Any person not entitled thereto who shall have unlawfully procured or have issued or transferred to him or her an identification card shall be guilty of a disorderly persons offense and shall be sentenced to pay a fine of not more than $300.00 or imprisonment for not more than 60 days. N.J.S.A. 33:1-81.7.

_____

The applicant hereby certifies that all of the foregoing information and statements are true in all respects.

11. Signature of applicant _____
(Date)

12. Signature witnessed by: _____
(County Clerk or Duly Authorized Deputy) (Date)

DO NOT WRITE BELOW THIS LINE

_____

Photo	Identification Card Number _____
1½" x 1½"	Date of Issuance _____
_____	Issued by _____

13:2-40.2 Establishment of age

The applicant shall to the satisfaction of the county clerk establish his or her age by presentation of a birth certificate, naturalization certificate or any other proof required by the county clerk, which after examination shall be returned to the applicant. **However, duplicate driver's licenses from any state shall not be used as proof of age or identity in applying for or receiving a County Identification Card.**

SUBCHAPTER 41. ISSUANCE OR TRANSFER OF PLENARY RETAIL CONSUMPTION LICENSES TO NON-PROFIT MUSICAL OR THEATRICAL CORPORATIONS; QUALIFICATIONS OF RESTAURANT OPERATORS

13:2-41.1 Plenary retail consumption licenses for non-profit musical or theatrical corporations; restaurant operator; definitions:

(a) For the purpose of this subchapter:

1. A "non-profit corporation" suitable for licensure is a bona fide non-profit entity which conducts musical or theatrical performances or concerts on a regular basis on premises with a total seating capacity of 1,000 persons or more.

2. "Licensed premises" shall include the premises where the musical or theatrical performance or concert is held, as well as any adjacent premises owned and operated by the non-profit licensee, and which premises have been licensed under an approved issuance or place-to-place transfer application.

3. A "restaurant operator" is a retail licensee or permittee or any person who has been qualified and approved for a retail license under the applicable provisions of the law and authorized by the Director to sell alcoholic beverages under the license issued to the non-profit corporation.

13.2-41.2 Issuance of special license

(a) All applicants for a special license issued pursuant to N.J.S.A. 33:1-19.7 shall comply with the application, advertising and hearing provisions of N.J.A.C. 13:2-2.

(b) A local issuing authority shall take no action upon an application for a license by a non-profit corporation until receiving the approval of the Director. Approval of an application will be conditioned upon a certification by the issuing authority and a finding by the Director that the following conditions have been satisfied:

1. The municipality intends to issue this special plenary retail consumption license;

2. The applicant is a bona fide non-profit corporation;

3. The applicant has exclusive possession and control of the

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premises to be licensed and the premises meet the requirements of N.J.S.A. 33:1-19.7; and

4. The applicant and premises are qualified for licensure and are in compliance with all applicable provisions of law.

13:2-41.3 Qualification of restaurant operator

(a) An application submitted by a restaurant operator to exercise the privileges of a special plenary retail consumption license issued to a non-profit corporation holding a special license issued pursuant to N.J.S.A. 33:1-19.7, may be approved by a local issuing authority upon receipt of the prior authorization of the Director.

(b) The Director's authorization is conditioned upon a finding that one of the following conditions has been satisfied:

1. The restaurant operator currently is a qualified retail licensee or permittee; or

2. If the restaurant operator is not currently a qualified retail licensee or permittee, the local issuing authority has caused an investigation into the background of the applicant and has certified to the Director that the restaurant operator has complied with the provisions of N.J.A.C. 13:2-2.

(c) All restaurant operator applicants shall disclose:

i. The source of all funds used in the purchase of the license and the licensed business and have submitted all documents concerning their business arrangements with the non-profit corporation holding the license; and

ii. Any other information that the Director may deem appropriate.

13:2-41.4 Privileges and limitations of special license

(a) A license issued pursuant to the provisions of N.J.S.A. 33:1-19.7 authorizes the sale of alcoholic beverages for consumption on the licensed premises only during performances and two hours immediately preceding and immediately following performances.

(b) No sales in original containers for off premises consumption shall be made under the authority of this special license.

13:2-41.5 Person-to-person and place-to-place transfers

(a) A license issued pursuant to N.J.S.A. 33:1-19.7 may be transferred person-to-person, but only if the applicant for this license is fully qualified to receive this special license under the provisions of this statute and the transferree has complied with all applicable provisions of law required for a person-to-person transfer.

(b) A license issued pursuant to N.J.S.A. 33:1-19.7 may be transferred place-to-place, but only if the location to which it is to be transferred is fully qualified to receive this special license under the provision of this statute and the licensee has complied with all applicable provisions of law required for a place-to-place transfer.

(c) Expansion and reduction of premises must be accomplished by application for a place-to-place transfer of license.

(d) Applications for transfers of special plenary retail consumption licenses may only be filed by the qualified non-profit corporations authorized to hold such licenses.

13:2-41.6 Reporting changes in facts and in corporate structures

Changes in any facts contained in any existing filed application, including changes in corporate structure both in the non-profit corporation holding the license as well as any corporate restaurant operator, shall be reported in accordance with the provisions of N.J.A.C. 13:2-2.14 and 2.16.

13:2-41.7 Renewal of special plenary retail consumption licenses

A licenses issued under the provisions of N.J.S.A. 33:1-19.7 may only be renewed by the qualified non-profit corporation authorized to hold such license and shall be renewed as any other plenary retail consumption license, under appropriate provisions of law.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF NURSING

Certification of Nurse Practitioners/Clinical Nurse Specialists
Advanced Practice Areas for Certification
Proposed Amendments: N.J.A.C. 13:37-7.11

Authorized By: Board of Nursing, Sister Teresa Harris, Executive Director.

Authority: N.J.S.A. 45:11-24 and 45:11-46 to 50.

Proposal Number: PRN 1995-330.

Submit written comments by July 5, 1995 to:
Sister Teresa Harris, Executive Director
State Board of Nursing
Post Office Box 45010
Newark, N.J. 07101

The agency proposal follows:

Summary

N.J.A.C. 13:37-7.11(b) enables the New Jersey Board of Nursing to add additional categories of advanced practice recognized by the Board for certification as clinical nurse practitioners. The Board has identified an additional four advanced practice areas for certification. The Board proposes that these four areas be identified under N.J.A.C. 13:37-7.11(a)14, critical care; (a)15, emergency/burns/trauma; (a)16, medical-surgical; and (a)17, rehabilitation. Applicants for certification under these four additional areas will be certified as a nurse practitioner/clinical nurse specialist as long as they meet the requirements delineated in the subchapter.

A typographical error in N.J.A.C. 13:37-7.11(b) referencing practice areas outlined in N.J.A.C. 13:37-7.11 "(a) and (b) above" was changed to language referencing requirements in this subchapter for clarity and correctness.

Social Impact

The proposed amendment will have a positive impact on New Jersey's citizens by affording them public access to nurse practitioners with a high degree of competence and enhanced expertise in the proposed areas of certification. The rules will also protect the public by ensuring, through regulations, that high standards of competence are maintained within the regulated group.

Rules that establish new certified areas of specialty in critical care, emergency/burns/trauma, medical-surgical and rehabilitation, will have a positive social impact on individual nurse practitioners/clinical nurse specialists working in those areas. The practice of the nurse practitioner/clinical specialist working in these proposed areas of specialty requires a high degree of specialized knowledge, skill, proficiency and independent decision-making. State regulation of these practitioners will help eliminate some potential health and safety risks to the public who receive these health care services. The certification process will assure that the complex activities performed by nurse practitioner/clinical nurse specialists, including prescribing and ordering medications, laboratory and other diagnostic tests are regulated. The proposed new rules will also serve to protect the public from unqualified practitioners.

Economic Impact

The proposed amendment will have a favorable economic impact upon the public. A consumer who chooses to be treated by a certified nurse practitioner/clinical nurse specialist in the proposed areas of specialty may avoid the expense of seeing a physician and thereby enjoy substantial economic savings. To the extent that consumers do choose to be treated by certified nurse practitioners/clinical nurse specialists, the practice of medicine may be economically affected. Any adverse economic impact upon the practice of medicine will be greatly outweighed by the public benefits in providing consumers with a safe and effective means of broadening access to health care.

Economic expenses related to certification will be borne by the nurse practitioners seeking to acquire certifications in the areas of critical care, emergency/burns/trauma, medical-surgical and rehabilitation. These expenses include administrative costs (for example, application and biennial renewal fees) as well as the costs of education and examination. The applicant will bear the cost of successful completion of a graduate-level program including pharmacology; and the cost of successfully passing an advanced practice

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examination. The applicant will also bear the cost of paying the application fee, while the certificate holder will bear the cost of paying biennial renewal fees and continuing education expenses. All these costs are incurred on a voluntary basis by registered professional nurses who choose to practice as certified nurse practitioners/clinical nurse specialists in the areas proposed for adoption. Since higher remuneration for the clinical nurse specialist may be anticipated, administrative costs for education, examination and certification fees are outweighed by the benefits nurse practitioners will obtain from certification. To the extent that physicians use nurse practitioners/clinical nurse specialists in their practice; physicians may benefit by being able to perform more complex procedures which will generate higher revenue.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required here for the proposed amendment because there are no Federal standards or requirements which address this subject matter.

Regulatory Flexibility Analysis

The Board estimates that approximately 100 of its approximately 80,000 current registered professional nurse licensees will seek certification to practice as a nurse practitioner/clinical specialist in the four new areas proposed for adoption. If the 100 anticipated applicants for certification as nurse practitioner/clinical specialists are deemed small businesses under criteria set forth in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the following statements apply:

Compliance requirements under the proposed rules are no more than those required by prudent professional practice. Generally, nurse practitioners/clinical nurse specialists seeking certification in the new practice areas proposed for adoption must satisfy the same compliance requirements as any other nurse practitioner/clinical nurse specialist currently certified.

Certified nurse practitioner/clinical specialists must maintain records and report to the Board on the completion of 30 continuing education credits during each biennial period. Certified nurse practitioners/clinical specialists also must prescribe medications pursuant to jointly developed written protocols which must be reviewed, updated and signed at least annually by the nurse practitioner/clinical specialist and his or her collaborating physician. Finally, certified nurse practitioners/clinical specialists must prepare written prescriptions and orders, and dispense medications in accordance with accepted standards of practice which must include certain basic identifying information. Costs of compliance are as stated in the economic impact statement. No professional services are likely to be needed in order to comply.

Because the proposed rules seek to promote and protect the public health safety and welfare, they must be uniformly and consistently applied. Therefore, no differential treatment can be accorded to small businesses.

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

13:37-7.11 Categories of advanced practice

(a) The following categories of nurse practitioners or clinical nurse specialists may be certified in accordance with the provisions of N.J.S.A. 45:11-45 et seq. and this subchapter:

1.-11. (No change.)

12. Maternal/child; [and]

13. Oncology[.]; **14. Critical care;**

15. Emergency/Burns/Trauma;

16. Medical-Surgical; and

17. Rehabilitation.

(b) Other categories may be approved by the Board through the rulemaking process. Consistent with requirements for approval of the practice areas outlined in [(a) and (b) above] **in this subchapter**, any additional approved practice areas must meet nationally accepted standards.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF OPTOMETRISTS

New Jersey State Board of Optometrists Rules Proposed Readoption with Amendments: N.J.A.C. 13:38

Authorized By: Board of Optometrists, Susan Gartland, Executive Director.

Authority: N.J.S.A. 45:12-4.

Proposal Number: PRN 1995-342.

Submit comments by July 5, 1995, to:
Susan Gartland, Executive Director
Board of Optometrists
Box 45012
Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:38 is scheduled to expire on August 27, 1995. The Board of Optometrists has reviewed the current rules and, with the following exceptions, has found them to be necessary and effective for the purposes for which they were originally promulgated. The current rules proposed for readoption have had an advantageous impact on the regulation of the optometric profession by enabling the Board to have in place procedures that maintain high standards of optometric practice, thus serving and protecting the public's best interests.

This chapter contains six subchapters. Subchapter 1 sets forth rules regarding advertising practices. The Board is deleting reference to solicitation practices in the subchapter heading because the solicitation practices regulation was repealed by R.1989 d.252, effective May 15, 1989 (see 21 N.J.R. 1366(b)). The advertising standards set forth in N.J.A.C. 13:38-1.2 were substantially amended effective July 19, 1993 in order to increase competition in the profession, provide for increased consumer information and continue to guard against deceptive and misleading practices. (See 25 N.J.R. 3232(a).) As an additional consumer protection measure, the Board is now proposing amendments to paragraphs (c)5 and 6 relating to advertised offers of combined packages. The proposed amendments will require disclosure of the price of an eye examination if purchased separately. Proposed amendments to N.J.A.C. 13:38-1.3(b) will permit a corporate advertiser to provide only one officer's name; currently, corporate advertising must contain the names of all corporate officers licensed to practice optometry in New Jersey. The amendment to N.J.A.C. 13:38-1.3(d) merely clarifies existing rule text.

Subchapter 2 contains general rules of optometric practice covering the following topics: minimum examination standards; required equipment; minimum eyewear standards and tolerances; patient records, prescriptions and dispensing of medications; vision screening and vision service plans; division of fees; access to the examining optometrist; and conditions for a preceptorship program.

N.J.A.C. 13:38-2.1(a) and 2.2(a), minimum examination and mandatory equipment requirements, are proposed to be amended to provide that neither applies in offices where eye examinations for glasses and/or contact lenses are not performed. The existing regulation requires all licensees to have equipment necessary for prescribing regardless of whether they actually prescribe for eyeglasses and contact lenses.

N.J.A.C. 13:38-2.3(a) and (b) have been combined for easier reading, while N.J.A.C. 13:38-2.4 has been amended for clarification only.

Subchapter 3 sets forth requirements for licensure. N.J.A.C. 13:38-3.1, 3.2, 3.3 and 3.8 concerning the licensing examination are proposed to be repealed because the Board no longer administers the licensing examination; rather, it is administered by the North East Region Clinical Optometric Assessment Testing Service (NERCOATS). N.J.A.C. 13:38-3.10 is proposed for repeal because the Board has identified approved accrediting bodies for schools or colleges of optometry; the Board previously engaged in the accreditation process itself. Because six of the existing 14 sections of subchapter 3 are now reserved, the Board has determined to recodify the subchapter without reference to reserved sections.

In recodified N.J.A.C. 13:38-3.1, change of name, the dollar amount charged by the Board for issuance of a new registration certificate to a licensee whose name has been legally changed has been deleted and replaced

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by a cross-reference to the fee schedule. N.J.A.C. 13:38-3.2, Renewal of registration certificates, has been amended to correct the ending date of the Board's biennial renewal period to conform with current Board practice, that is, renewal by April 30 of the odd numbered years, and in N.J.A.C. 13:38-3.3, Military service, the word "licentiate" has been changed to "licensee" for consistency with other rules in this subchapter.

Proposed repeal and new rule N.J.A.C. 13:38-3.4, Accredited schools of optometry, indicates that the Board no longer accredits schools or colleges of optometry and identifies the Board-approved accrediting bodies. Similarly, amendments to N.J.A.C. 13:38-3.5, Requirements for application for licensure, reflect that the Board no longer tests candidates for licensure.

Recodified N.J.A.C. 13:38-3.6 and 3.7 are proposed for readoption without change. These sections prohibit the employment of an optometrist by unlicensed persons or during a period when an employing optometrist's license is suspended or revoked.

Proposed amendments to recodified N.J.A.C. 13:38-3.8, Branch offices, clarify an existing source of confusion among licensees by more clearly stating the difference between a simple address change and an application for a new branch office and by clarifying the circumstances when each is required.

Subchapter 4 implements the provisions of the Consumer Access to Eye Care Act of 1991, P.L. 1991, c.385. Included in the subchapter are the educational and examination requirements for certification to prescribe or dispense pharmaceutical agents for treatment of the eye. These requirements are ocular pharmacology credits and successful completion of the National Board Examination in Treatment and Management of Ocular Disease. Applicants for biennial certification renewal must complete 20 continuing professional education credits in Board-approved courses relating specifically to ocular pathology and ocular pharmacology. The Board is proposing to expand the courses which may satisfy the renewal requirement by permitting certified optometrists to take courses relating to a systemic disease (such as diabetes), ocular manifestations of which disease are treatable by pharmacological agents.

Subchapter 5 sets forth fees charged by the Board for various licenses and certifications. The amendment to N.J.A.C. 13:38-5.1(a)9 merely deletes unnecessary wording.

Subchapter 6 contains one section governing the availability of records. The first sentence of subsection (a) has been deleted as duplicative of information appearing in N.J.A.C. 13:38-2.3 and an amendment to the second sentence clarifies that the patient is entitled to receive the record. A proposed new requirement would mandate that when any person or entity other than another optometrist or physician acting on the patient's behalf requests the record, a signed release be obtained from the patient. The release requirement was added because the Board has noted increased numbers of requests for records for reasons other than those directly relating to the patient or the patient's health. The proposed release requirement is intended to safeguard the patient's right to confidentiality.

A proposed amendment to subsection (b) implements the provisions of P.L. 1991, c.441, providing for patient access to contact lens prescriptions. Amendments to subsection (b), including a warning to the patient that the physical measurements of the eyes may change over times, were originally proposed on March 7, 1994 and therefore have expired. (See 26 N.J.R. 1220(a).) Based upon comments received during the 30 day comment period, the reproposed amendments to subsection (b) clarify when a contact lens prescription is complete and require an expiration date on the prescription.

Subsection (d) is amended for clarification only. New subsection (e) requires the licensee to establish procedures for patient access to records if the licensee ceases to engage in practice or will remain out of practice for more than three months.

Social Impact

The rules proposed for readoption will continue to protect and safeguard the public health. The rules clarify and explain the professional practice standards necessary to maintain a high level of professional competence for active registered and certified optometrists and also provide for the orderly administration of the Board. Because the purpose of the rules is to protect the health and safety of the patient, in addition to maintaining professionalism within the practice, this readoption will have a positive social impact.

The following analysis applies to the proposed amendments other than those proposed for clarification purposes only.

Advertising disclosures proposed in N.J.A.C. 13:38-1.2(c) relating to "package" offers will provide for increased consumer information and continue to guard against deceptive and misleading advertising.

The proposed amendment to N.J.A.C. 13:38-1.3(b)1 reduces the reporting burden upon advertising corporations by requiring only that the name of at least one corporate officer, as opposed to the names of *all* corporate officers, appear in the advertisement. This will be beneficial to both the corporate advertiser and to the public to the extent that it induces additional or more frequent corporate advertising and thereby increases competition among the regulated profession.

The proposed amendment to N.J.A.C. 13:38-4.5 will expand the continuing education courses an optometrist seeking certification renewal may attend to include courses on systemic diseases. The consumer will benefit from treatment rendered by a more knowledgeable and well-rounded eye care professional.

Additional consumer protection should also result from the amendments to subchapter 6 concerning patient records. The requirement of a signed release when records are requested for other than patient health care purposes will safeguard the patient's rights to confidentiality. The warning now required to be provided upon release of contact lens prescriptions will serve to protect patients who may be unaware of the time-limited nature of contact lens specifications. Finally, the new provision requiring the optometrist to establish procedures for patient access to records if the licensee ceases to engage in practice or will remain out of practice for more than three months will benefit the patient requiring continuity of care.

Economic Impact

The rules proposed for readoption will have an economic impact upon licensees, who must pay biennial licensing and certification fees and who are expected to pay what is necessary to maintain their practices and their continuing proficiency in the manner prescribed by the Board and by statute. The Board believes that the economic impact upon licensees is outweighed by the benefits these rules provide in maintaining professional practice standards that serve to ensure responsible and effective optometric practice. The Board notes that the fee schedule is proposed for readoption without change in the fee structure.

The proposed amendments will have no significant adverse impact on licensees because they are largely "housekeeping" amendments intended to clarify, correct and update the Board's rules. The additional advertising disclosure requirements will apply only to those licensees who advertise optometric "packages" and should result in only modestly increased advertising costs relating to including the price of the eye examination if purchased separately.

No discernible economic impact will be derived with regard to the implementation of the Consumer Access to Eye Care Act of 1991. The statutory provisions that the amendments to N.J.A.C. 13:38-6.1(b) implement have been in place for several years, and the proposed amendments merely attempt to provide uniform guidance to licensees. The extra cost of providing the warning is considered by the Board to be negligible, and clearly outweighed by the benefit in assuring that patients obtain contact lenses that fit properly and will not cause harm to their eyes. Similarly, any expenses incident to obtaining the signed release required by the amendment to N.J.A.C. 13:38-6.1(a), or in advertising practice cessation as required by N.J.A.C. 13:38-6.1(e), are anticipated to be negligible and in any event more than outweighed by the benefit to the patient in ensuring the confidentiality of patient records and in providing the patient with a historical health and treatment record.

Favorable economic results of this proposal should accrue to corporate advertisers in that their advertisements will no longer have to list all corporate officers. Optometrists who do not provide eye examinations will also experience a favorable economic impact because they will not have to maintain minimum equipment in their offices. The Board estimates that only a small number of licensees maintain practices that do not offer eye examinations.

No funding sources will be affected by this proposed readoption and there is no additional administrative cost imposed on this or any other agency. Failure to readopt this Chapter will be detrimental to the operation of the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to fund its operations through licensing and other fees.

Executive Order No. 27 Analysis

An Executive Order No. 27 Analysis is not required because the rules proposed for adoption do not involve any Federal standards or regulations.

Regulatory Flexibility Analysis

The rules proposed for readoption will apply to the approximately 1,850 optometrists licensed by the Board of Optometrists (1,150 active and 700 inactive). The rules also apply to 18 accredited schools or colleges of optometry (see, N.J.A.C. 13:38-2.12). Since these schools employ more than

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100 individuals, they would not be considered small businesses under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. ("the Act"). If optometrists are deemed "small businesses" within the meaning of the statute, the following analysis is acceptable.

All licensees must renew their registration certificates biennially and obtain replacement certificates upon a change of name or a change of branch office address pursuant to the provisions set forth in Subchapter 3. Compliance costs are set forth specifically in the Board's fee schedule codified at subchapter 5. Licensed optometrists must also comply with additional provisions set forth in subchapter 3 prohibiting employment by unlicensed persons or by any optometrist during a period when the employing optometrist's license has been suspended or revoked. In addition, pursuant to the provisions of N.J.A.C. 13:38-6.1(a), licensees must ensure that patient records are available upon request. A signed release from the patient must be obtained in order to release records for other than health care purposes, and a written warning regarding use of an out of date prescription must be provided upon release of contact lens specifications directly to the patient. As stated in the Economic Impact statement, the costs involved in obtaining the release and supplying a written warning are expected to be negligible and in any event are more than outweighed by the consumer protection benefits provided.

All licensees who prescribe for eyeglasses or contact lenses must comply with the requirements set forth in subchapter 2 concerning prescriptions (N.J.A.C. 13:38-2.4(a)); minimum examination procedures (N.J.A.C. 13:38-2.1); minimum equipment (N.J.A.C. 13:38-2.2); and minimum standards and tolerances (N.J.A.C. 13:38-2.10). These licensees are also required to maintain patient records for seven years (N.J.A.C. 13:38-2.3). Capital costs and costs of compliance would be involved only in the event that a licensee does not own the minimum equipment set forth in N.J.A.C. 13:38-2.2..

Licensees authorized to prescribe pharmaceutical agents (666 licensees) must comply with the requirements for issuing prescriptions and dispensing medications as set forth in N.J.A.C. 13:38-2.4. Compliance requirements include providing specific information on the prescription and on each container of medication dispensed directly to a patient, and advising patients by a sign or pamphlet in the waiting room of the availability of generic substitutions for any prescribed medication. These licensees must also obtain continuing education credits as a condition of license renewal. Costs of obtaining continuing education credits vary depending upon the type of course. Typically, the cost is $100.00 for a three-credit course.

A licensee who acts as a preceptor to supervise a fourth year student at an accredited optometry school or college must ensure that the school or college complies with the requirements set forth in N.J.A.C. 13:38-2.12; that is, selection of preceptors and submission to the Board of a detailed description of the program and the name and address of the preceptor and preceptee. The preceptor must display his or her Certificate of Preceptorship on the office premises and shall advise patients of the status of the preceptee prior to submission of the patient to the examination by the preceptee. The preceptor must be on the premises when the preceptee takes any tests; be available for supervision at all times; and review the preceptee's patient evaluations prior to final determination of the case before the patient leaves the premises. Any compliance costs other than those already required to comply with the requirements of the school or college, if any, should accrue to the school or college and not to the preceptor.

A licensee who chooses to advertise professional services must comply with the requirements of subchapter 1 that delineate acceptable content and set forth recordkeeping and reporting requirements. Specifically, the licensee must retain a copy of any advertisement for a period of three years following the date of publication or dissemination and must make copies available on request by the Board or its designee. Advertisers making use of testimonials must document and retain specific information, including the amount or value of compensation and a signed notarized statement and release indicating the testimonial giver's willingness to have his or her testimonial used in the advertisement. Corporate advertisers must file with the Board each year a copy of a report showing the names and addresses of all shareholders, directors and officers of the corporation and the names and addresses of all licensed optometrists employed by the corporation. Costs of complying with these advertising regulations cannot be estimated as they would vary depending upon the type and size of the advertisement.

The Board does not believe that the services of any other professionals will be required to comply with any of the requirements outlined above. Because these rules seek to promote and protect the public health and welfare through regulation of optometrists, no differentiation in compliance based upon business size is provided.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:38.

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

13:38-1.2 General advertising practices

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

(c) An optometrist may advertise fees for services to be rendered and prices for ophthalmic goods and merchandise offered for sale provided that:

1.-4. (No change.)

5. Where prices are set forth for ophthalmic goods and services for eyeglasses (lenses and frames), the advertisement shall indicate the type of frames and corrective lenses being offered such as clear or tinted, single vision or multifocal, and plastic, glass or other material. The lenses and frames may be priced separately or as a combined item **(package). If the eye examination is included in the package, the advertisement shall also indicate the cost of the eye examination if the package is not purchased**;

6. When prices are set forth for ophthalmic goods and services for contact lenses, the advertisement shall include, but not be limited to, the fee for the eye exam appropriate to a contact lens evaluation, the type and brand of lens being offered, fitting instruction and follow-up care. These items may be priced separately or as a combined package. **If a combined package is advertised, the advertisement shall also indicate the cost of the eye examination if the package is not purchased.** If the cost of a contact lens care kit is not indicated as a separate item or as a part of a package, the following statement shall be set forth: "The proper maintenance of contact lenses requires sterilization, storage and cleansing in special containers and solutions, the cost of which is not included in this offer." In all advertisements which include a price for a contact lens care kit, the type of kit shall be set forth. When the price of a contact lens is advertised, a statement shall be made to note that such lens may not be appropriate for all patients; and

7. (No change.)

(d)-(k) (No change.)

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

(a) (No change.)

(b) A licensed optometrist who is also an officer of a professional service corporation which renders optometric service or sells ophthalmic merchandise shall:

1. In all advertising placed by such corporation cause to be conspicuously disclosed the name[s] of [all] **at least one** corporate officer[s] who [are] **is** licensed to practice optometry within this State;

2.-3. (No change.)

(c) (No change.)

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

(e) (No change.)

[13:38-1.4 through 1.10 (Reserved.)]

13:38-2.1 Minimum examination; record of conditions

(a) As authorized under N.J.S.A. 45:12-11v, **prior to prescribing for eyeglasses or contact lenses,** the following procedures shall be performed [on each and every patient examined] and the findings shall be duly recorded:

1.-12. (No change.)

(b) (No change.)

13:38-2.2 Minimum equipment

(a) For the proper performance of the requirements of N.J.A.C. 13:38-2.1 (Minimum examination), the following equipment is mandatory [in each office in this State where an optometrist is licensed to practice]:

1-10. (No change.)

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13:38-2.3 Records of examinations and prescriptions

[(a)] Every optometrist practicing in this State shall keep a **complete** record of examinations made and prescriptions issued[, which shall include the names and address of persons examined and for whom prescriptions were prepared.] **The record shall include, but not be limited to, all findings and pertinent facts concerning the patient that are discovered and disclosed during the course of the examination, as well as the record of professional services rendered and the fees charged. The record shall be preserved by the optometrist for a period of not less than seven years from the date of the last entry.**

[(b) All findings and pertinent facts concerning the patient, discovered during the course of such examination, as well as the record of professional services rendered and the fees charged, shall be preserved by the optometrist for a period of not less than seven years from the date of the last entry.]

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

13:38-2.4 Requirements for issuing prescriptions and dispensing of medications

(a) (No change.)

(b) Every optometrist certified to prescribe pharmaceutical agents pursuant to the provisions of N.J.A.C. 13:38-4 and P.L. 1991, c.385, shall, in addition to the information set forth in (a) above, provide the following on all prescriptions for pharmaceutical agents:

1.-2. (No change.)

3. Adequate instruction for the patient[. A direction of]**; for example, the use of** "p.r.n." or "as directed" [alone shall be deemed an] **without further instruction shall be deemed** insufficient direction.

4.-5. (No change.)

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

[13:38-3.1 Application for examination

Applications for examination by the Board made in accordance with the provisions of N.J.S.A. 45:12-5, shall be completed and filed with the secretary of the Board not more than 60 days nor less than 30 days prior to the date of which the examination is to be held.

13:38-3.2 Reexamination

An applicant for licensure failing the first examination shall be permitted to take any of the next two succeeding examinations conducted by the Board. An applicant failing the examination twice must take courses approved by the Board before taking the examination a third and fourth time. This same procedure shall prevail after each two failures.

13:38-3.3 Payment of registration fee

Any applicant who satisfactorily passes the examination by the Board shall be required to pay the fee of $15.00 for his registration certificate within 30 days after receiving notification from the Board that he has satisfactorily passed said examinations.]

13:38-[3.4]**3.1** Change of name

The Board shall issue a new registration certificate to any licensee whose name has been legally changed upon receipt of satisfactory evidence of the legality of such change, the return of the original certificate with satisfactory evidence that [he] **the licensee** is the same person to whom the certificate was issued, together with a fee [of $10.00] **as set forth in N.J.A.C. 13:38-5.1**.

13:38-[3.5]**3.2** Renewal of registration certificates

All registration certificates shall be renewed on or before [December 31 of each year] **April 30 of the odd numbered years**, subject to the provisions of N.J.S.A. 45:12-9.

[13:38-3.6 (Reserved)]

13:38-[3.7]**3.3** Military service

Any [licentiate] **licensee** of the board who is engaged in active duty in the military service of this country shall not be required to pay the renewal fees for any year during which he **or she** is in service.

[13:38-3.8 Degree required of applicants

Applicants for examination by the board subsequent to July 1, 1956, must be graduates of an approved college of optometry that grants the degree of doctor of optometry.]

13:38-[3.9]**3.4** Accredited schools of optometry

[No school or college of optometry will be accredited by the board that fails to require for graduation the satisfactory completion of a course of study of at least six college years, consisting of at least two college years of preoptometry study or its equivalent in an accredited college or university, and at least four college years of professional study of optometry in an accredited college or university. Credits received in less than four calendar years in an optometric school or college of optometry, except as provided for in section 10 of this subchapter, will not be accepted by the board as proper qualification.] **Accredited schools and colleges of optometry are those schools duly accredited by the United States Department of Education and the Council on Postsecondary Accreditation.**

[13:38-3.10 Accelerated courses

No school or college of optometry will be accredited by the board which admits students to an accelerated course in optometry except in times of national emergency during which the Federal government requires accelerated courses in lieu of induction into the armed military forces.]

13:38-[3.11]**3.5** Requirements for application for licensure

(a) Applications for licensure will be accepted under the following conditions:

1. (No change.)

2. The applicant shall have passed [the basic science and clinical science] **parts I and II of the** written examination conducted by National Board of Examiners in Optometry, and the New Jersey Board of Optometrists shall have received verification of the scores from the National Board of Examiners in Optometry; and

3. The applicant shall have passed an optometric clinical skills assessment test administered [either by the New Jersey State Board of Optometrists on or before July 18, 1990 or] by the North East Region Clinical Optometric Assessment Testing Service (NERCOATS) [on or after July 11, 1990], and the State Board of Optometrists shall have received verification of test scores from NERCOATS.

Recodify existing 13:38-3.12 and 3.13 as **3.6 and 3.7** (No change in text.)

13:38-[3.14]**3.8** Branch offices

(a) A branch office [license] **certificate** issued for one address is [not] transferable to a different address. A licensee desiring to change [his] **a** branch office address must file a [new application for a new branch office license] **change of address form together with the fee as set forth in N.J.A.C. 13:38-5.1** and must return the branch office certificate previously issued [for cancellation with his new application and fee for the new branch office license].

(b) A licensee desiring an additional branch office certificate must file an application for a new branch office certificate and submit the fee as set forth in N.J.A.C. 13:38-5.1.

13:38-4.5 Biennial certification renewal

(a) An application for certification renewal shall be issued by the Board upon the applicant's submission of proof that during the two calendar years immediately preceding application for renewal the applicant successfully completed 20 continuing professional education credits in Board-approved courses devoted to [both ocular pathology and ocular] pharmacology, **ocular manifestation of systemic disease treatable by pharmacological agents, or ocular pathology treatable by pharmacological agents as defined in N.J.S.A. 45:12-1**. Each credit shall represent or be equivalent to one hour of actual course attendance.

(b) (No change.)

13:38-5.1 Fee schedule

(a) The following fees shall be charged by the Board:

1.-8. (No change.)

9. Each additional certificate-certification to prescribe [(for second and third branch locations)] $25.00

10.-17. (No change.)

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13:38-6.1 Availability of records

(a) [A patient record prepared by an optometrist shall be maintained for seven years from the date of the last entry.] The patient record, or a copy thereof, shall be released, **upon oral or written request, to the patient or** to another optometrist or physician **acting on behalf of the patient. A patient record shall be released to any other person or entity only upon receipt of a signed release from the patient whose records are being requested.**

(b) [The complete record of contact lens specifications shall be released by an optometrist to another optometrist, ophthalmologist or ophthalmic dispenser licensed in New Jersey upon either the oral or written request of the patient or the professional acting on the patient's behalf.] **An optometrist shall release a copy of a patient's contact lens prescription directly to a patient or to a licensed ophthalmologist, a licensed optometrist, or a New Jersey licensed ophthalmic dispenser upon either the oral or written request of a patient or a professional acting on a patient's behalf. If an optometrist releases a contact lens prescription directly to a patient, the optometrist shall provide the patient with a written warning, which shall include the following language:**

You should be aware that the physical measurements of your eyes may change over time. Using contact lenses that are not properly fitted can endanger your eye health. If you wish to obtain new lenses, you should see your eye doctor to assure that your lenses are fitting properly.

As used in this section, a "contact lens prescription" shall include those specifications contained within the doctor's records that are necessary for the preparation of contact lenses for a patient. A contact lens prescription is not complete unless and until a patient has been fitted for the contact lenses being prescribed. A contact lens prescription shall include a date of expiration.

(c) (No change.)

(d) The above subsections **relative to the release of contact lens and eyeglass prescriptions** shall not apply unless the patient has satisfied all financial obligations to the optometrist.

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

1. Establish a procedure by which patients may obtain their records or transfer those records to another licensee who will assume the responsibilities of the practice;

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

3. File a notice of the established procedure for the retrieval of records with the Board of Optometrists.

(a)

LAW AND PUBLIC SAFETY
STATE ATHLETIC CONTROL BOARD
Rules Governing Boxing, Wrestling and Sparring Exhibitions and Performances
Proposed Readoption: N.J.A.C. 13:46

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

Authority: N.J.S.A. 5:2A-4; 5:2A-7; 5:2A-8(b); 5:2A-9; 5:2A-14(b); 5:2A-14.1; 5:2A-15(e); 5:2A-15(f); and 5:2A-21.

Proposal Number: PRN 1995-320.

Submit written comments by July 5, 1995 to:

Charles F. Kimmel, Counsel
State Athletic Conrol Board
CN-180
140 East Front Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 13:46 establishes rules implementing P.L. 1985, c.83. That law disbanded the former State Athletic Commission and established the State Athletic Control Board. The declared purposes of the Legislature were to ensure the safety of participants in combative sports and to extend strict State regulation to all persons and organizations involved in combative sports. This chapter was adopted prior to 1969 and was substantially amended in 1985 in conformity with the establishment of the State Athletic Control Board. The rules were readopted as new rules in 1990 and have been amended periodically. They will expire on September 4, 1995 unless readopted.

This chapter establishes a licensing system for combative sports participants, including boxers, wrestlers, seconds, promoters, and managers, as well as for State Athletic Control Board Officials such as timekeepers, judges, referees, and inspectors. It sets forth the method of applying for licensure, the fees for such licensure, and a discipline system for licensees who violate these rules. This chapter establishes the rules of competition for boxing and other combative sports events in this State. These rules cover the size of the ring, the number of rounds, the scoring system, and the method for protesting a decision. This chapter also establishes rules to protect the health and safety of combative sports participants by specifying the presence of physicians and their authority to stop a contest, the authority of the referee, the size of the boxing gloves, the inspection process, pre- and post-fight medical exams, and the required safety equipment for each contest. Finally, these rules implement the ticket and television taxes enacted by the Legislature.

In conjunction with the mandate of Executive Order No. 66(1978) to periodically review regulations, and in recognition of its own budgetary constraints, the State Athletic Control Board recently undertook a thorough examination of all of its regulations. As a result, the SACB published four separate proposals to amend this subchapter in the March 20, 1995 edition of the New Jersey Register. The comment period on these proposals expires on June 19, 1995. If the proposed amendments are subsequently adopted, this proposed readoption would encompass those amendments.

The rules in this chapter have helped New Jersey be recognized as a leader in the area of boxing regulation, particularly on the issue of the health and safety of the participants. This chapter has also provided a set of regulations for boxing which has permitted numerous championship matches to be held in this State. These rules also carry out the Legislature's directive to ensure that those associated with combative sports are subject to regulatory scrutiny, thus furthering the trust and confidence of the public.

Social Impact

The people of New Jersey, through their Legislature, have expressed a desire to have combative sports exhibitions in this State, provided such exhibitions are done under a system of State regulation which protects the welfare of the combatants. These rules implement the public's desire. In addition, it is well known that the actual combatants may be in need of physical and economic protection. These rules, by setting requirements for presence of physicians and by providing the framework for competition, protect the physical well-being of contestants. Also, by providing a licensure system, including a review of manager-contestant contracts, these rules help protect contestants from unscrupulous persons who would take advantage of them.

It must also be noted that boxing matches are frequently held at or in proximity to Atlantic City and its casinos. Boxing matches are a popular entertainment attraction for casino patrons. The failure to readopt rules to permit boxing matches may have a detrimental impact on the casino industry and on the jobs dependent on that industry.

Economic Impact

In addition to those boxers, wrestlers, promoters, managers, officials, seconds, and trainers, who have direct involvement in combative sports, a number of people are indirectly affected economically by the combative sports industry in this State. Ushers and vendors who are employed at arenas where exhibitions are held would lose work if these rules were not readopted. The arenas themselves would lose rental fees. Casinos might lose the patronage of those fight fans who are initially attracted to a casino by a combative sports event and who then subsequently patronize the casino. In order to assure the

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vitality of the combative sports industry and those who benefit economically from it, readoption of this subchapter is essential.

The rules proposed for readoption also have an economic impact on those who are directly regulated such as boxers, wrestlers, seconds, managers, promoters, and others. The rules establish license fees for these individuals which constitute a direct cost which must be paid in order to participate in combative sports in this State. The rules also provide a framework for competition and licensing which permits combative sports to occur in this State, thus allowing those participants in the industry to earn a living. Other persons such as gym owners, trainers, and equipment manufacturers and distributors are able to contribute to the economy because of the money they earn in the combative sports industry in this State.

The Board itself has six full-time employees and also employs numerous officials, physicians, and inspectors. The Board is funded through fees imposed on participants, including several charges such as salaries for inspectors and physicians which are through assessments on promoters. The Board is also supported by New Jersey taxpayers through a budget appropriation in an amount offset by the television and ticket taxes and various fees which the Board collects. The rules require the presence of Board officials and physicians at every combative sports event, and also require that the Board incur fees for post-fight urinalysis done on all boxers.

The Board's requirements of pre-fight medical exams and medical insurance coverage for all contestants and referees are additional costs which are borne by promoters.

In summary, the combative sports industry in this State has an economic impact, both direct and indirect, on a large number of people. Readoption of these rules is necessary in order to continue the positive economic impact for this State which the combative sports industry provides.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the State Athletic Control Board are dictated by the statute which establishes the SACB, N.J.S.A. 5:2A-1 et seq., and are not subject to any Federal requirement or standard.

Regulatory Flexibility Analysis

The chapter to be readopted does not impose recordkeeping or reporting requirements on small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Some boxing and wrestling promoters constitute small businesses, and the rules which are proposed for readoption impose compliance costs on such promoters. There are less than 30 such promoters, who constitute less than five percent of the total licensees regulated under this subchapter. The remaining licensees are individuals.

The compliance costs include licensing fees as well as costs such as payments for referees, judges, timekeepers, inspectors, and physicians, as well as expenses incurred by the State Athletic Control Board during a specific combative sports event. As these fees are necessary for the Board's expenses in maintaining the integrity of combative sports in New Jersey, and as such expenses are not related to the size of the promoting entity, no lesser fees or exemptions are provided based on business size.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:46.

(a)

DIVISION OF STATE POLICE

Criminal History Record Information Background Checks

Proposed Amendments: N.J.A.C. 13:59-1
Proposed New Rules: N.J.A.C. 13:59-2

Authorized by: Colonel Carl A. Williams, Superintendent, Division of State Police, and approved by Deborah T. Poritz, Attorney General.

Authority: N.J.S.A. 53:1-12 through 53:1-20.7.

Proposal Number: PRN 1995-352.

Submit comments by July 5, 1995 to:
Colonel Carl A. Williams, Superintendent
c/o State Bureau of Identification
New Jersey State Police, P.O. Box 7068
West Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

N.J.A.C. 13:59 is scheduled to expire on July 31, 1995, by operation of Executive Order No. 66(1978). The Superintendent of the Division of State Police has reviewed the current rules and, with the following amendments, has found them to be necessary and effective for the purposes for which they were originally promulgated. The current rules are being proposed for readoption in a proposal published elsewhere in this issue of the New Jersey Register. The amendments to those rules proposed herein will have an advantageous impact on the reliable dissemination of criminal history record information to all categories of individuals and entities permitted access by law.

Pursuant to Executive Order No. 9(1968) and its successor, Executive Order No. 123(1985), which exempt criminal history record information from the category of records available to the public under the New Jersey's Right to Know Law, N.J.S.A. 47:1A-1 et seq., access to centralized criminal history records had been strictly limited to persons and entities with specific legal authorization. In June 1994, the Legislature amended N.J.S.A. 53:1-20.6 and 53:1-20.7 to require the Superintendent of the Division of State Police, with the approval of the Attorney General, to adopt rules and regulations authorizing the State Bureau of Identification ("SBI") to disseminate criminal history background information to "individuals, nongovernmental entities or other governmental entities whose access to such criminal history record background information is not prohibited by law." P.L. 1994, c.60. Accordingly, the Superintendent, with the Attorney General's approval, proposed amendments to the rules in effect at that time governing dissemination of criminal history record information. The proposed rules were designed to establish a comprehensive regulatory scheme identifying categories of authorized persons and entities who could request and receive criminal history record information on properly identified subjects. 26 N.J.R. 3595(a) (September 6, 1994). The amendments were adopted effective December 5, 1994. 26 N.J.R. 4782(a).

Those 1994 regulatory amendments attempted to strike a balance between the competing interests of subjects of requests on the one hand and, on the other, persons and entitites who must make informed judgments pertaining to prospective employees, volunteers and others whose services are required by the inquirers. Four categories of authorized requesters were given access to New Jersey information: governmental entities; persons or non-governmental entities for purposes of determining a person's qualifications for employment, volunteer work or provision of other services; New Jersey licensed attorneys; and New Jersey licensed private detectives. Dissemination of New Jersey information was further limited to persons and entities of the State. The amendments distinguished between New Jersey criminal history record information and national criminal history record information. Unless users were specifically authorized by Federal or state statute to obtain Federal and out-of-State criminal history record information ("national requesters"), an "authorized requester" could only access New Jersey criminal history record information.

These amendments have been reviewed and reconsidered by the Superintendent who has determined, with the approval of the Attorney General, that pursuant to the broad authority in N.J.S.A. 53:1-20.6, the public welfare would be better served by permitting access to New Jersey criminal history record information for noncriminal justice purposes to all persons or entities, without regard to purpose or residency, unless specifically prohibited by law. This result is consistent with the national trend toward providing access to centralized criminal history records to both governmental and private entities for noncriminal justice purposes. To accomplish this goal, amendments to the regulations adopted in December 1994 are now being proposed.

The definitions of "criminal justice agencies," "national requesters" and "requesters" in N.J.A.C. 13:59-1.1 have been redrafted to clarify the three categories of persons and entities entitled to request access to criminal history record information. "Requesters" are entitled to information from New Jersey's central repositories for noncriminal justice purposes. All distinctions between in-State and out-of-State requesters have been removed. "National requesters," who must be specifically authorized by Federal or state statutes, are entitled to information from New Jersey's central repositories as well as information from the Federal systems and other states' computerized repositories accessible to the Division of State Police. Both requesters and

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national requesters may access the information for noncriminal justice purposes. "Criminal justice agencies" may access centralized information for criminal justice purposes only. N.J.A.C. 13:59-1.2 has been modified to reflect permissible dissemination of the information to the two new categories for noncriminal justice purposes.

These proposed amendments make certain changes in the information to be released for noncriminal justice purposes. The definition of "criminal history record information" or "CHRI" includes information collected by criminal justice agencies and stored in central repositories of the Division of State Police. This information consists of "identifiable descriptions and notations of arrests, indictments, or other formal criminal charges, and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing, correctional supervision and release." N.J.A.C. 13:59-1.1. The definition of criminal history record information, in approximately this form, was the first added to these rules in 1992. The proposed amendments do not alter this definition in any material way.

However, not all of the information defined as criminal history record information is currently disseminated for noncriminal justice purposes. Dismissals, acquittals, no-bills and not-guilty determinations have been excluded from the criminal history record information disseminated for noncriminal justice purposes. See current definition of "dissemination of criminal history record information" at N.J.A.C. 13:59-1.1. In the proposed amendments, this information will now be included in the disseminated reports. See proposed N.J.A.C. 13:59-1.2(a). This change is being proposed to bring State regulations in line with Federal practice. The FBI now disseminates **all** information in a criminal history record and does not redact dispositions favorable to the subject of the record. Situations may occur where a national requester has received a report from the FBI containing information on New Jersey dismissals and acquittals which had been redacted from the report issued by the State Police. Inclusion of this information will result in a more complete and accurate report, often to the advantage of the subject of the record check. For example, if an employer received a record of a pending arrest and a year or two later asked for another record check, it would clearly be in the subject's best interest that the employer be informed that the pending arrest resulted in a dismissal or acquittal.

The $25.00 fee for New Jersey fingerprint checks imposed by N.J.A.C. 13:59-1.3(a) has been lowered to $18.00 if the records check is on a person who volunteers with a qualified entity, as defined by the National Child Protection Act of 1993. This modification was made to ensure consistency with that act, which states that the fee for a criminal history records check for a defined volunteer shall be no more than the cost of the search or $18.00, whichever is less. Because of the limited financial resources of entities that have been qualified by the IRS as exempt from Federal income taxation pursuant to 26 U.S.C. §501(c)(3), the $25.00 State fingerprint check fee has also been lowered to $18.00 when the subject is an employee or volunteer with such an organization. The $15.00 fee for a State name check has been lowered to $11.00 in the same circumstances.

Fees have been added for two additional services offered by SBI. N.J.A.C. 13:59-1.3(e) imposes a $5.00 fee when an individual requests a list of all persons and entities who have accessed his or her criminal history record for noncriminal justice purposes, as permitted by N.J.A.C. 13:59-1.7(b). N.J.A.C. 13:59-1.3(f) imposes a $10.00 fee for the service offered in N.J.A.C. 13:59-1.8. At the user's request, the SBI will "flag" a record for noncriminal justice purposes and will provide the inquirer with continual updates of the subject's record for a period of 24 months.

N.J.A.C. 13:59-1.4 was modified to redefine the SBI forms to be submitted by the two new categories of persons or entities entitled to dissemination of information for noncriminal justice purposes. Previously, the SBI-212A form advised the users that furnishing of social security numbers by subjects of name searches is voluntary. That form now will also advise potential employers that the New Jersey Law Against Discrimination may contain limitations on certain preemployment inquiries.

N.J.A.C. 13:59-1.5 was amended to clarify that a name search cannot be completed unless either the social security number or the date of birth is provided. Providing both of those identifiers is preferable because it will facilitate the search and increase the probability of a clear match between subject and record. If insufficient identifying information is provided in a request for a criminal history name search, no search will be conducted and the fees will be returned. Additionally, if apparently sufficient information is provided but the results of the search are inconclusive, the requester will be given a choice of receiving a "no record meeting dissemination criteria" response or of receiving the record on every possible matching candidate upon the submission of the appropriate fee for each such record.

N.J.A.C. 13:59-1.6 has been amended to remove certain limitations on further dissemination of records. These limitations are no longer necessary because of the increased access to the records now being proposed.

A new section, N.J.A.C. 13:59-1.7, now specifically permits an individual to access his or her own record to ensure its accuracy. Subsection (a) provides that the SBI will work with an individual to correct any inaccuracies in the record. This provision reflects the procedures presently used but not previously part of the regulation. N.J.A.C. 13:59-1.7(b) is also new and allows an individual to request and receive a list of noncriminal justice persons and entities who have previously accessed his or her record. These provisions will give subjects of record checks assurance that only accurate information will be disseminated and a means of determining who may have accessed his or her records.

Subchapter 2 has been added to address dissemination for criminal justice purposes. Previously, this information was interspersed in subchapter 1.

Social Impact

The proposed amendments broaden the categories of persons and entities entitled to request criminal history record information. Distinctions based on state of residence or purpose for which the information is sought have been eliminated. There are many valid reasons for needing access to this information that extend beyond the categories of persons and entities previously allowed access. Because all of the information provided by the SBI from the computerized records is public at the time of the arrest or conviction, the privacy interests of the subject of a request will not be unreasonably infringed by the dissemination of this information by the SBI as permitted by this regulation.

Additional safeguards have been included to ensure only accurate information will be disseminated. As is evident in the definition of "criminal history record information," only up-to-date, accurate information is disseminated and information further protected by law, such as an expunged record, is not disseminated for noncriminal justice purposes. Any individual will now be able to access his or her own record, to work with the State Police to correct any inaccuracies, and to receive, at a minimal cost, thet list of other persons and entities who have accessed his or her records for noncriminal justice purposes.

Economic Impact

Certain minor modifications have been made to the fee structure. A fee of $5.00 has been added for the receipt of a list of persons or entities accessing an individual's personal record for noncriminal justice purposes.This fee will cover the additional costs incurred by the SBI but should not limit access to any individual. A fee of $10.00 has been added for "flagging" a record. Fees for both State fingerprint and name checks on employees and volunteers for IRS recognized "501(c)(3)" organizations have been reduced approximately 25 percent to $18.00 and $11.00 respectively. Organizations qualified pursuant to the National Child Protection Act also have been given the reduced rate for fingerprint checks. The amendments to these rules are expected to result in a greater number of requests for criminal history record information. However, the additional fees collected from the additional searches are expected to cover the additional costs incurred by the SBI.

Executive Order No. 27 Statement

State law governs the dissemination of criminal history record information compiled and maintained by the Division of State Police. Therefore, an Executive Order No. 27 analysis and certification are not required. To the extent that Federal regulations apply to the dissemination of criminal history record information compiled and maintained by the FBI, the Federal regulations and procedures are referenced herein.

Regulatory Flexibility Analysis

The amended rules do not impose any reporting, recordkeeping or compliance costs upon small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any cost incurred by small businesses as defined by the Act will be voluntary in nature and amount. All small businesses will be subject to the same fees for obtaining criminal history record information as any other for-profit entities or persons eligible to receive such information.

The amended rules do not significantly modify the existing fees structure which was intended to minimize, to the extent possible, any adverse economic impact on small businesses. The fees are statutorily mandated. Small business only incur the fees if they voluntarily determine to access criminal history information through the SBI.

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

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SUBCHAPTER 1. [USER FEES] **NONCRIMINAL JUSTICE PURPOSES**

13:59-1.1. Definitions

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

"Access" means to instruct, communicate with, store data in, gain entry into, retrieve data from, disseminate, or otherwise make use of any computer, computer system, [or] computer network, **or other element of a central repository**.

"Administration of criminal justice" or "criminal justice purpose" includes:

1. The detection, apprehension, detention, pretrial and post-trial release, prosecution, adjudication, correction**al**[,] supervision or rehabilitation of accused persons or criminal offenders;

2. The hiring of persons for employment by criminal justice agencies **or the granting of access to a criminal justice facility**; and

3. Criminal identification activities, including the accessing of the New Jersey Criminal Justice Information System, the National [Law Enforcement Telecommunications System (NLETS)] **Crime Information Center (NCIC)]** or other states' computerized repositories containing criminal history record information, by criminal justice agencies for the purposes set forth in paragraphs 1 and 2 of this definition.

"Attorney General" includes the Attorney General of New Jersey and, when authorized by the Attorney General to access [Criminal History Record Information] **criminal history record information**, his or her Assistants and Deputies.

["Authorized requester" means any person, agency or entity, including national requesters, authorized by Federal or State statute, rule or regulation, executive order, administrative code, local ordinance, resolution or by this chapter, to obtain dissemination of Criminal History Record Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information for non-criminal justice purposes, including licensing and/or employment.]

"Criminal [History Record Information] **history record information**" or "CHRI" means information collected by criminal justice agencies concerning persons and stored in the [computerized databases] **central repositories** of the New Jersey State Police SBI [Criminal History Information System], the National [Law Enforcement Information System] (NLETS) **Crime Information Center (NCIC)** or other states' computerized repositories containing criminal history record information consisting of identifiable descriptions and notations of arrests, indictments, or other formal criminal charges, and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing, correctional supervision and release.

"Criminal justice agency" means:

1. The courts of the State of New Jersey, **any other state or the Federal government**; and

2. A governmental entity of the State of New Jersey, **any other state or the Federal government** which performs functions pertaining to the administration of criminal justice pursuant to statute, ordinance, resolution or regulation, and which allocates a substantial portion of its budget to the administration of criminal justice.

"Dissemination of [Criminal History Record Information] **criminal history record information**" means the process whereby the State Bureau of Identification accesses **and distributes information from** the [criminal history record databases] **central repositories** of the New Jersey State Police SBI [Criminal Justice Information System], the National [Law Enforcement Telecommunications System (NLETS)] **Crime Information Center (NCIC)** or other states' computerized repositories containing criminal history record information. [to compare sets of classified fingerprints or to conduct name search requests to determine if New Jersey, Federal or out-of-State criminal history record information exists for persons identified by authorized requesters, and includes:

1. The dissemination by the State Bureau of Identification to authorized requesters, other than national requesters, of all records of convictions in New Jersey State courts and all records of pending arrests and charges for violations of New Jersey laws, regardless of their age, unless such records have been expunged pursuant to law; or

2. The dissemination by the State Bureau of Identification to authorized national requesters of all criminal history record information from the databases of the New Jersey State Police SBI Criminal Justice Information System, the National Law Enforcement Telecommunications System (NLETS) or other states' computerized repositories containing criminal history record information, unless such records have been expunged by law.]

"FBI" means the Federal Bureau of Investigation in the United States Department of Justice.

"Fee" means that cost established [by law for processing all criminal history record requests for authorized requesters for noncriminal justice purposes, including licensing and/or employment] **for performing services authorized by this chapter, as set forth in N.J.A.C. 13:59-1.3**.

"Governmental entities" [includes] **means the Federal government or any** [the State] **state**, any office, department, division, bureau, board, commission or agency of **the Federal government or** [the State] **a state**, and any county, municipality, district, public authority, public agency and any other political subdivision or public body within [the State] **a state**.

"National requesters" [shall] means persons, agencies or entities authorized by [Federal] **federal** or [State] **state** statute **and approved by the FBI,** to obtain **for a noncriminal justice purpose** dissemination of **New Jersey,** [Federal] **federal** and out-of-[State] **state** criminal history record information accessed by the State Bureau of Identification from the [computerized databases] **central repositories** of the New Jersey State Police SBI [Criminal Justice Information System], the National [Law Enforcement Telecommunications System (NLETS)] **Crime Information Center (NCIC)** and other states' computerized repositories containing criminal history record information.

"New Jersey Criminal Justice Information System Users Agreement" means an agreement signed by a criminal justice agency, the Division of State Police and the Office of Telecommunications and Information Systems permitting the criminal justice agency to directly access the computerized databases of the New Jersey Criminal Justice Information System, or NCIC or other states' repositories of computerized CHRI for the performance of administration of criminal justice purposes.

"Non[-]criminal justice purpose" means any purpose, other than administration of criminal justice or criminal justice purpose[, including employment and licensing, for which applicant fingerprints or name search requests are submitted by authorized requesters, as required or permitted by a Federal or State statute, rule or regulation, executive order, administrative code provision, local ordinance or by this chapter, to the State Bureau of Identification for the dissemination of criminal history record information].

"Public servant" means any officer or employee of [State] state **or Federal** government or of any political subdivision or public body of [the State] **state or Federal government**, including any advisor or consultant retained by government to perform a governmental function.

"Requester" means any person, agency or entity requesting dissemination of CHRI from the central repositories of the New Jersey State Police SBI for a noncriminal justice purpose in accordance with this chapter.

"State Bureau of Identification"[,] or [(]"S[.]B[.]I[.)]" means the State Bureau of Identification created by [P.L. 1930, c.65] **N.J.S.A. 53:1-12** as a bureau within the Division of State Police.

"SBI Number Flag" shall mean an electronic note entered on or attached to a specific SBI number in the New Jersey Computerized Criminal History System (CCH) indicating that a request has been made by a requester, national requester or criminal justice agency for the service authorized by N.J.A.C. 13:59-1.8 and 2.6.

"SBI Number" shall mean the identification number assigned to the criminal history record file of the State Bureau of Identification for a particular individual as identified by fingerprints.

"Superintendent" shall mean the Superintendent of the New Jersey Division of State Police ([P.L. 1984, c.439, §7] **N.J.S.A. 53:1-2**).

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13:59-1.2 [Additional dissemination authorized by this chapter]
Dissemination for noncriminal justice purposes

(a) [In addition to any other Federal or State laws, regulations, executive orders, ordinances or resolutions authorizing the dissemination of criminal history record information, the following requestor] **Requesters** are authorized **for noncriminal justice purposes** to obtain from the SBI all **criminal history record information from the central repositories of New Jersey State Police SBI** [records of convictions in New Jersey State courts and, regardless of their age, all records of pending arrests and charges for violations of New Jersey laws], unless such records have been expunged pursuant to law.[:

1. Governmental entities of this State, the Federal government or any other state for any official governmental purposes, including, but not limited to, employment, licensing and the procurement of services;

2. A person or non-governmental entity of this State for purposes of determining a person's qualifications for employment, volunteer work or other performance of services;

3. Attorneys-at-law licensed by the State of New Jersey for use in any contested matters docketed in any State or Federal courts or administrative agencies of this State; and

4. Private detectives licensed by the Division of State Police pursuant to N.J.S.A. 45:19-8 et seq., for purposes of obtaining information in furtherance of the performance of their statutorily authorized functions, as specifically enumerated by N.J.S.A. 45:19-9(A)1 to 9.

(b) Requesters authorized by (a)1 and 2 above to obtain criminal history record information shall, on the completed forms or fingerprint cards prescribed pursuant to N.J.A.C. 13:59-1.4, obtain the signatures of the subjects of the requests. Requesters authorized by (a)1 and 2 and (a)4 above shall sign certifications on the forms prescribed by the Division of State Police. The signed certifications shall specify that:

1. The requesters are authorized to receive criminal history record information in conformity with (a) above;

2. That such records shall be used by the requesters solely for the purposes enumerated by the relevant provisions of (a) above;

3. That such records will not be disseminated to persons for unauthorized purposes; and

4. That the requesters will otherwise comply with the provisions of N.J.A.C. 13:59-1.6(a).

c. Except in cases of attorneys-at-law of this State and licensed private detectives proceeding under (a)3 and (4) above, requesters authorized by (a) above to obtain criminal history record information shall sign certifications on the forms prescribed by the Division of State Police certifying:

1. They will furnish the subjects of their inquiries with adequate notice to complete or challenge the accuracy of the records provided by the SBI;

2. If requested by the subjects of the inquiries, they will provide them with a reasonable period of time to correct or complete any records provided to the SBI;

3. They will not presume guilt for any pending arrests or charges indicted on records received from the SBI; and

4. That they will otherwise comply with the provisions of N.J.A.C. 13:59-1.6(b).]

(b) With the submission of New Jersey and FBI fingerprint cards pursuant to N.J.A.C. 13:59-1.4, national requesters may obtain from the SBI and the FBI all criminal history record information retained on the subject and accessed by the SBI, including all criminal history record information from the central repositories of the New Jersey State Police SBI, the National Crime Information Center (NCIC) or other states' computerized repositories containing criminal history record information, unless such records have been expunged by law.

13:59-1.3 Fees

(a) A fee of $25.00 shall be collected by the SBI for the purpose of processing fingerprint identification [checks.] **cards and checking them against the information in the central repositories of the New Jersey State Police SBI. This fee shall be $18.00 for processing New Jersey fingerprint identification checks on:**

1. Any person who volunteers with a qualified entity, as that term is defined by the National Child Protection Act of 1993, 42 U.S.C. §§5119, 5119c; and

2. Any person who is employed by or volunteers his or her services to an entity that has been qualified by the Internal Revenue Service as exempt from Federal income tax pursuant to 26 U.S.C. §501(c)(3).

(b) A fee of $15.00 shall be collected by the SBI for the purpose of processing criminal history name search identification checks. **This fee shall be $11.00 for processsing a name search on any person who is employed by or volunteers his or her services to an entity that has been qualified by the Internal Revenue System as exempt from federal income tax pursuant to 26 U.S.C. §501(c)(3).**

(c) In addition to the fees collected in (a) [and] **or** (b) above, a non-refundable fee **in an amount determined by the FBI** shall be collected from each [applicant] **national requester** to pay for the cost of securing and processing of [national criminal record] checks **of criminal history record information stored in the NCIC or other states' repositories of computerized CHRI** for non[-]criminal justice purposes where such checks are authorized by law.

(d) In addition to the fees collected in (a) or (b) above, and pursuant to 28 C.F.R. §16.33, a non-refundable fee shall be collected from each individual requesting a fingerprint search of his or her personal criminal history record stored in the NCIC or other states' repositories of computerized CHRI pursuant to N.J.A.C. 13:59-1.7(a).

(e) A $5.00 fee shall be collected for requests made pursuant to N.J.A.C. 13:59-1.7(b).

(f) A $10.00 fee shall be collected for the service authorized by N.J.A.C. 13:59-1.8.

[(d)]**(g)** Unless otherwise provided by law, all fees collected for accessing and disseminating criminal history record information shall be deposited in the "Criminal History Record Information Fund."

[(e)]**(h)** New Jersey State governmental entities may submit a "Memo Processed Certificate of Debit and Credit" for the applicable amount with each group of submissions to the State Bureau of Identification.

[(f)]**(i)** Payment shall be made by cashiers check, certified check, money order or ordinary business check. Requesters **and national requesters** who conduct large volumes of transactions may maintain prepaid accounts with the approval of the Superintendent. Any form of payment other than that specified in this section shall be first approved by the Superintendent [checks]. **A single check** or money order[s] **shall be drafted to cover all applicable fees prescribed by this chapter with the exception of the fee prescribed by (d) above and** shall be made payable to "Division of State Police—SBI." **The fee prescribed by (d) above shall be made payable to the Federal Bureau of Investigation.**

13:59-1.4 Prescribed forms

(a) Requests for [Criminal History Record Information by authorized requestors] **criminal history record information** shall be on forms as prescribed by this section.[, except that attorneys-at-law of the State of New Jersey may obtain criminal history record information pursuant to N.J.A.C. 13:59-1.2(a)3 upon the payment of the fees prescribed by N.J.A.C. 13:59-1.3 by the lawful issuance of subpoenas. Such subpoenas shall be issued in accordance with applicable rules of court and administrative procedure and shall be on notice to all parties required to receive same.]

[(b) The prescribed forms shall be used to access Criminal History Record information for any requests from authorized requesters for non-criminal justice purposes, including licensing and/or employment.]

[(c)]**(b)** For **New Jersey** fingerprint identification purposes an "Applicant" fingerprint card **SBI-19** must be used. The exception to this rule will be for a firearms application which requires a "Firearms Application" card **SBI-19A. SBI-19 and SBI-19A forms must be signed by the indivdual whose fingerprints are on the card.**

[1. Fingerprint card SBI-19 or SBI-19A: The fee as prescribed in this chapter, if in the form of a check, or money order, must be stapled to the lower left corner of the "Applicant" fingerprint card SBI-19 or "Firearms Application" fingerprint card SBI-19A and submitted to the State Bureau of Identification for processing.

2. For authorized requesters submitting fingerprint cards pursuant to the provisions of N.J.A.C. 13:59-1.2(a)1 and 2, the card shall be

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accompanied by "Request for Criminal History Record Information" form SBI-212A which must be completed in its entirety.]

(c) A Federal fingerprint card FD-258 must be submitted by national requesters and by individuals requesting a search pursuant to N.J.A.C. 13:59-1.7(a) for information contained in NCIC or other states' computerized repositories of CHRI.

(d) For name search identification purposes, a **requester must use a** "Request for Criminal History Record Information" form [SBI-212 or] SBI-212A [must be used]. [In cases of name search identification requests pursuant to 13:59-1.2(a)(1), (2) and (4), a "Request for Criminal History Record Information" form SBI-212B must be used.]

1. "Request for Criminal History Record Information Forms[s]" ([SBI-212,] SBI-212A[, OR SBI-212B]): [These] **This** form[s] shall be completed in [their] **its** entirety and shall contain all the information required to complete the check, including the name of the subject, the date of [the] birth of the subject and, when authorized pursuant to (d)2 [above] **below**, the social security number of the subject. [SBI forms submitted by private detectives and subpoenas issued by the attorneys-at-law of this State pursuant to N.J.A.C. 13:59-1.2(a)3 and 4, shall recite the name of the subject and the subject's date of birth.]

2. Pursuant to the Privacy Act of 1974 [(P.L. 93-579)], **5 U.S.C. §552a(note)**, [the forms prescribed by this subsection] **SBI-212A** shall advise **requesters** [the subjects of name searches] that the furnishing of [their] social security numbers **by the subjects of name searches must be** [is] voluntary and that [their] social security numbers will only be used for purposes of processing requests for criminal history record information.

3. SBI-212A shall advise requesters that employers, potential employers, or employment agencies are subject to the preemployment inquiry provisions of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-12 et seq., and regulations adopted by the New Jersey Division of Civil Rights pursuant thereto, including N.J.A.C. 13:7-1.1g, and applicable federal civil rights laws.

[3.](e) The fees as prescribed in this chapter, if in the form of a check[,] or money order must be stapled to the front of **the** [each SBI-212,] SBI-212A [or SBI-212B] form **or to the lower left corner of the "Applicant" fingerprint card SBI-19 or "Firearms Application" fingerprint card SBI-19A and** submitted to the State Bureau of Identification for processing.

13:59-1.5 Rejection and resubmission procedures

(a) Any fingerprint card or Request for Criminal History Record Information form which is rejected will be returned with the submitted fee to the [authorized] requester **or national requester**. The procedure as set forth at N.J.A.C. 13:59-1.4 will be utilized for resubmissions with the following exceptions.

1. Fingerprint cards that cannot be classified will be rejected and returned to the [authorized] requesters[s] **or national requester**. The fees which accompanied the fingerprint cards will be retained by the SBI. Upon resubmission, the rejected fingerprint card will be stapled to the newly taken fingerprint card and both cards will be submitted with the original rejection form to the SBI. No additional charges will be assessed for resubmitted fingerprint cards.

2. No criminal history name search shall be conducted unless either birth date or social security number has been provided. Submission of both birth date and social security number will facilitate retrieval of the requested record. If a request for a criminal history name search does not contain sufficient identifying information, the requester will be informed that no search can be conducted. Any fee collected will be returned.

3. Whenever a criminal history name search based upon the particular identifying information supplied produces one or more possible candidates, the requester will be informed of the number of candidates with matching names and identifying information and will be given the option of receiving the records of all candidates upon the submission of an additional fee for each record sought or of receiving a "no record meeting dissemination criteria" response. Any fee paid will be retained by the SBI.

13:59-1.6 Limitations on access and use of Criminal History Record Information (CHRI) **for noncriminal justice purposes**

[(a) Access to criminal history record information for non-criminal justice purposes, including licensing and employment, is restricted to authorized requesters as defined by this chapter. Such requesters shall limit their use of criminal history record information solely to the authorized purpose for which it was obtained and Criminal History Record Information furnished by the SBI shall not be disseminated by authorized requesters to persons not authorized to receive the records for authorized purposes.]

[(b)](a) If [Criminal History Record Information] **criminal history record information** may be used to disqualify a person from **obtaining or** holding any position, employment or license or performing any services, whether compensated or uncompensated, the [person acting on behalf of the authorized] requester **or national requester or other person** making such determination shall provide the [applicant] **subject of the request** with adequate notice to [complete or challenge] **confirm or deny** the accuracy of any information obtained in the [Criminal History Record] **criminal history record**. The [applicant] **subject of the request** shall be afforded a reasonable period of time to correct or complete the record **prior to a final determination or decision concerning the subject's eligibility for the position, employment or license**. A person [shall not be] **is** presumed [guilty] **innocent** of any pending charges or arrests for which there are no final dispositions indicated on the record.

[(c)](b) The State Bureau of Identification shall prominently display the following on any record disseminated for noncriminal justice purposes[, including, employment and licensing].

Use of this record is governed by [Federal] **federal** and [State] **state statutes and** regulations. Unless fingerprints accompanied your inquiry, the State Bureau of Identification cannot guarantee this record relates to the person who is the subject of your request. [Use of this record shall be limited solely to the authorized purpose for which it was given and it shall not be disseminated to any unauthorized persons. This record shall be destroyed immediately after it has served its intended and authorized purposes.] **All records are subject to change and in the event that a record is later expunged, dissemination may be prohibited pursuant to N.J.S.A. 2C:52-30.** Any person violating [Federal] **federal** or [State] **state statutes or** regulations governing access to **and use of** [Criminal History Record Information may be] **criminal history record information is** subject to **any applicable** criminal [and/] or civil penalties **and remedies**.

If this record may disqualify [an applicant for any purpose,] **the subject of the record from obtaining or holding any position, employment or license or performing any services, the requester, national requester or other** [the] person making the determination shall provide the [applicant] **subject of the record** with an opportunity to [complete and challenge] **confirm or deny** the accuracy of the information contained in the [Criminal History Record] **criminal history record**. The [applicant] **subject of the record** shall be afforded a reasonable period of time to correct and complete this record. A person is [not] presumed [guilty] **innocent** of any charges or arrests for which there are no final dispositions indicated on the record.This record is certified as a true copy of the [Criminal History Record Information] **criminal history record information** on file for the assigned [State identification] **SBI** number.

[(d) Criminal justice agencies, for purposes of the administration of criminal justice, may access Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCH/ANI) or State Crime Information System data (SCIC) from the databases of the New Jersey State Police SBI Criminal Justice Information System or NLETS or other states' repositories of computerized CHRI. The Attorney General, or his or her designee, may access the databases of the New Jersey Criminal Justice Information System for any official purpose.]

[(e)](c) Except when [authorized as a] **engaged in the** lawful exercise of official duties [in conformity with (d) above, or unless officially authorized for noncriminal justice purposes], no public servant shall access or permit any other person to access [Criminal History Record Information (CHRI), the Computerized Criminal History-Automated

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Name Index (CCH/ANI), State Crime Information Center data (SCIC)] **information** stored in the **central repositories of the** New Jersey State Police SBI [Criminal Justice Information System], [NLETS] **National Crime Information Center (NCIC)** or other states' repositories of computerized CHRI. This prohibition shall include use of any computer, computer system or computer network which may access [CHRI, CCH/ANI, and SCIC] **computerized databases** stored in the New Jersey Criminal Justice Information System. [NLETS] **NCIC** or other states' repositories of computerized CHRI. Access by any public servant to [CHRI, CCH/ANI and SCIC] **information** stored in the **central repositories of the** New Jersey State Police SBI [Criminal Justice Information System], [NLETS] **NCIC** or other states' repositories of computerized CHRI shall be in strict conformity with these rules[, the Federal regulations (28 CFR §20.1 et seq.) and any "New Jersey Criminal Justice Information System Users Agreement" entered into by any criminal justice agency and the Division of State Police].

[(f) Any criminal justice agency which has executed a "New Jersey Criminal Justice Information System Users Agreement," and which accesses Criminal History Record Information (CHRI), Computerized Criminal History-Automated Name Index (CCHI/ANI) State Crime Information System Data (SCIC) stored in the New Jersey State Police SBI Criminal Justice Information System, or NLETS or other states' repositories of computerized CHRI for the performance of administration of criminal justice functions, shall be provided with the full text of these rules by the State Bureau of Identification.]

13:59-1.7 Dissemination of personal record to named individual

(a) The SBI will work in concert with any person to make any necessary corrections to that person's criminal history record information. For the purpose of determining the accuracy thereof, any individual may request a name search or fingerprint search on his or her personal criminal history record:

1. By submitting the fee specified in N.J.A.C. 13:59-1.3(b) and the form specified in N.J.A.C. 13:59-1.4(d), an individual may request a name search of the information in the central repositories of the New Jersey State Police SBI;

2. By submitting the fee specified in N.J.A.C. 13:59-1.3(a) and the form specified in N.J.A.C. 13:59-1.4(b), an individual may request a fingerprint search of the information in the central repositories of the New Jersey State Police SBI;

3. By submitting the fee specified in N.J.A.C. 13:59-1.3(d) and the form specified in N.J.A.C. 13:59-1.4(c), an individual may request a fingerprint search of the information in the NCIC and other states' computerized repositories containing criminal history record information.

(b) A person may request the SBI to furnish a list of the identities of requesters or national requesters that have accessed that person's criminal history record information from the SBI for noncriminal justice purposes. Such requests shall be on forms prescribed by the Superintendent and shall be accompanied by the fee prescribed by N.J.A.C. 13:59-1.3(e).

13:59-1.8 SBI number flag

At the request of a requester or national requester, the SBI will attach an SBI Number Flag to a specific SBI number and, for a period of 24 months, will provide arrest and conviction notification to the requester or national requester when any fingerprint-supported change to the subject's criminal history record is entered to the specific SBI Number. Such requests shall be accompanied by the fee prescribed by N.J.A.C. 13:59-1.3(f) above. Such requests may be renewed after a period of 24 months by complying with these procedures, including submission of an additional fee.

SUBCHAPTER 2. CRIMINAL JUSTICE PURPOSES

13:59-2.1 Definitions

The words and terms, when used in this subchapter, shall have the same meanings set forth in N.J.A.C. 13:59-1.

13:59-2.2 Dissemination for criminal justice purposes

Criminal justice agencies, for purposes of the administration of criminal justice, may obtain from the SBI or otherwise access information collected by criminal justice agencies concerning persons and stored in the central repositories of the New Jersey State Police SBI, the National Crime Information Center (NCIC) or other states' computerized repositories containing criminal history record information.

13:59-2.3 Fees

No fee shall be charged or any requests made by any criminal justice agency for criminal history record information or other services provided by this chapter.

13:59-2.4 Prescribed forms

(a) Requests for name searches directed to the SBI for criminal history record information shall be on form SBI-212.

(b) For fingerprint identification search requests of information stored in the central repositories of the New Jersey State Police SBI, an "Applicant" fingerprint card SBI-19 or a "Criminal Arrest" fingerprint card SBI-15 must be used.

(c) A Federal fingerprint card FD-258 must be submitted by a criminal justice agency requesting a search of information contained in NCIC or other states' computerized repositories of CHRI.

(d) Any criminal justice agency which has executed a "New Jersey Criminal Justice Information System Users Agreement" in the form prescribed by the Superintendent may access directly the computerized databases stored in the New Jersey Criminal Justice Information System, or NCIC or other states' repositories of computerized criminal history record information for the performance of administration of criminal justice purposes.

(e) These forms shall be completed in their entirety and shall contain all the information required to complete the check.

13:59-2.5 Limitations on access and use of criminal history record information (CHRI) obtained for criminal justice purposes

(a) Access to criminal history record information for criminal justice purposes is restricted to criminal justice agencies as defined by this chapter. Criminal justice agencies shall limit their use of criminal history record information solely to the authorized purpose for which it was obtained. Criminal history record information furnished by the SBI or accessed pursuant to a "New Jersey Criminal Justice Information System User's Agreement" shall not be further disseminated for any purpose, unless such further dissemination is authorized by law.

(b) The State Bureau of Identification shall prominently display the following on any record disseminated for criminal justice purposes.

Use of this record is governed by federal and state statutes and regulations. Unless fingerprints accompanied your inquiry, the State Bureau of Identification cannot guarantee this record relates to the person who is the subject of your request. Use of this record shall be limited solely to the authorized criminal justice purpose for which it was given and it shall not be further disseminated for any other purpose. This record shall be destroyed immediately after it has served its intended and authorized criminal justice purpose. All records are subject to change and in the event that a record is later expunged, dissemination may be prohibited pursuant to N.J.S.A. 2C:52-30, unless otherwise authorized by law. Any person violating federal or state regulations governing access to criminal history record information is subject to any applicable criminal or civil penalties and remedies.

A person is presumed innocent of any charges or arrests for which there are no final dispositions indicated on the record. This record is certified as a true copy of the criminal history record information on file for the assigned State identification number.

(c) Except when authorized as a lawful exercise of official duties in conformity with N.J.A.C. 13:59-1.2 and 2.2, or unless otherwise authorized by law to provide access to criminal history record information for noncriminal justice purposes, no public servant shall access or permit any other person to access the information stored in the central repositories of the New Jersey State Police SBI, National Crime Information Center (NCIC) or other states' repositories of

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computerized CHRI. This prohibition shall include use of any computer, computer system or computer network which may access computerized databases stored in the New Jersey Criminal Justice Information System, NCIC or other states' repositories of computerized CHRI. Access by any public servant to information stored in the central repositories of the New Jersey State Police SBI, NCIC or other states' repositories of computerized CHRI shall be in strict conformity with these rules, the Federal regulations (28 CFR §20.1 et seq.) and any "New Jersey Criminal Justice Information System Users Agreement" entered into by any criminal justice agency and the Division of State Police and Office of Telecommunications and Information Systems.

13:59-2.6 SBI number flag

At the request of a criminal justice agency, the SBI will attach an SBI Number Flag to a specific SBI number and will provide arrest and conviction notification to the criminal justice agency when any fingerprint supported change to the subject's CHRI is entered to the specific SBI Number.

(a)

DIVISION OF STATE POLICE

Criminal History Record Information on Background Checks

Proposed Readoption: N.J.A.C. 13:59

Authorized By: Colonel Carl A. Williams, Superintendent, Division of State Police, and approved by Deborah T. Poritz, Attorney General.

Authority: N.J.S.A. 53:1-12 through 53:1-20.7.

Proposal Number: PRN 1995-351.

Submit comments by July 5, 1995 to:
Colonel Carl A.Williams, Superintendent
c/o State Bureau of Identification
New Jersey State Police, P.O. Box 7068
West Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

N.J.A.C. 13:59 is scheduled to expire on July 31, 1995 by operation of Executive Order No. 66(1978). The Superintendent has reviewed the current rules and has found them to be necessary and effective for the purposes for which they were originally promulgated. The current rules have had and will continue to have an advantageous impact on the reliable dissemination of Criminal History Record Information. Certain amendments are being proposed elsewhere in this issue of the New Jersey Register to modify these rules in ways to even better serve the public interest.

Pursuant to Executive Order No. 9(1968) and its succesor, Executive Order No. 123(1985), which exempt criminal history record information from the category of records available to the public under the New Jersey's Right to Know Law, N.J.S.A 47:1A-1 et seq., access to centralized criminal history records had been strictly limited to persons and entities with specific legal authorization. In June 1994, the Legislature amended N.J.S.A. 53:1-20.6 and 53:1-20.7 to require the Superintendent of the Division of State Police, with the approval of the Attorney General, to adopt rules and regulations authorizing the State Bureau of Identification ("SBI") to disseminate criminal history background information to "individuals, nongovernmental entities or other governmental entities whose access to such criminal history record background information is not prohibited by law." P.L. 1994, c.60. Accordingly, the Superintendent, with the Attorney General's approval, proposed amendments to the rules in effect at that time governing dissemination of criminal history record information. The proposed rules were designed to establish a comprehensive regulatory scheme identifying categories of authorized persons and entities who could request and receive criminal history information on properly identified subjects. 26 N.J.R. 3595(a) (September 6, 1994). The amendments were adopted effective December 5, 1994, 26 N.J.R. 4782(a).

Those 1994 regulatory amendments attempted to strike a balance between the competing interests of subjects of requests and persons and entities who must make informed judgments pertaining to prospective employees, volunteers and others whose services are required by the inquirers. The amendments distinguish between New Jersey criminal history record information and national criminal history record information. Unless users are specifically authorized by Federal or state statute to obtain Federal and out-of-State criminal history record information ("national requesters"), an "authorized requester" may only access New Jersey centralized criminal history record information.

The 1994 amendments created four categories of authorized requesters who could access New Jersey information: governmental entities; persons or non-governmental entities for purposes of determining a person's qualifications for employment, volunteer work or provision of other services; New Jersey licensed attorneys; and New Jersey licensed private detectives. This approach is consistent with the national trend toward providing access to computerized criminal conviction records to both governmental and private entities for noncriminal justice purposes. Governmental and private entities or persons are required to obtain the signatures of the subjects of criminal history record requests prior to submission to the SBI. Attorneys and private detectives are not required to obtain the signatures of the subjects. Private and governmental requesters seeking the information for employment purposes or for the providing of other services must also certify that they will furnish the subjects with adequate notice and time to verify the accuracy of the records provided by the SBI.

The rules in N.J.A.C. 13:59 provide chapter definitions, additional dissemination authorized by this chapter, fees, prescribed forms, rejection and resubmission procedures, and limitation on access and use of Criminal History Record Information (CHRI).

Social Impact

The rules proposed for readoption will continue to have a positive social impact by ensuring that reliable and accurate criminal history record information is provided to those persons and entities with a stated need to know for noncriminal justice purposes. At the same time, safeguards are provided to ensure subjects of record checks that only complete and accurate information is disseminated.

Economic Impact

The fees are a codification of P.L. 1994, c.60 regarding permissible fees which must be collected by the Division of State Police for the processing of fingerprint and name search requests. Only those individuals and entities requesting this service need incur these costs. The substantive amendments to these rules adopted in December 1994 are expected to result in a greater number of requests for criminal history record information. Insufficient time has elapsed since adoption to predict with accuracy the level of increase. However, it is anticipated that the fees collected from the additional searches will cover the associated increased costs incurred by the SBI.

Executive Order No. 27 Statement

State law governs the dissemination of criminal history record information compiled and maintained by the Division of State Police. Therefore, an Executive Order No. 27 analysis and certification are not required. To the extent that Federal regulations apply to the dissemination of criminal history record information compiled and maintained by the FBI, the Federal regulations and procedures are referenced herein.

Regulatory Flexibility Analysis

The amended rules do not impose any reporting, recordkeeeping or other compliance requirements upon small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any cost incurred by small businesses as defined by the Act will be voluntary in nature and amount. All small businesses will be subject to the same fees for obtaining criminal history record information as any other entities or persons eligible to receive such information. The fees were designed to minimize, to the extent possible, any adverse impact on small businesses, gives, within statutory limits, the fees' purpose to cover agency cost. The same is true concerning the compliance by small businesses with restrictions on the dissemination of criminal history records. Because the current dissemination restrictions are based upon the nature of the information sought, differentiation in requirements based upon requester business size is inappropriate.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:59.

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TRANSPORTATION

(a)

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

Speed Limits
Route N.J. 28
Bridgewater Township, Somerset County
Proposed Amendment: N.J.A.C. 16:28-1.1

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 1995-322.

Submit comments by July 5, 1995 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. 16:28-1.1 to revise certain "speed limit" zones along Route N.J. 28 in Bridgewater Township, Somerset County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request of the local government of Bridgewater Township in a letter from the Township Engineer dated September 20, 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 concluded that revising certain "speed limit" zones along Route N.J. 28 in Bridgewater Township, Somerset County, were warranted.

Appropriate signs shall be erected in areas where the "speed limit" zones have been changed.

Social Impact

The proposed amendment will establish a 45 miles per hour "speed limit" zone along Route N.J. 28 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 cost 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.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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]):

16:28-1.1 Route 28

(a) The rate of speed designated for the certain part of State Route 28 described in this section shall be [and hereby is] established and adopted as the maximum legal rate of speed thereat:

1. (No change.)
2. For both directions of traffic:

i.-vii. (No change.)

[viii. 50 mph to the westerly terminus of Route 28 at the Route US 22 interchange in Bridgewater Township.]

viii. 45 miles per hour between the Route U.S. 202-Route U.S. 206-Route N.J. 28 intersection (Somerville Circle) and the westernmost terminus of Route U.S. 22-Route N.J. 28 (approximate mileposts 0.00 to 2.23).

ix. (No change.)

(b)

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

Speed Limits
Route U.S. 322
Harrison Township, Gloucester County
Proposed Amendment: N.J.A.C. 16:28-1.20

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 1995-323.

Submit comments by July 5, 1995 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. 16:28-1.20 to revise certain "speed limit" zones along Route U.S. 322 in Harrison Township, Gloucester County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request of the local government of the Township of Harrison in a Resolution adopted on October 17, 1994, a memorandum dated October 7, 1994 from the Project Engineer of District S-3, Bureau of Traffic Engineering and Safety Programs, 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 concluded that revising certain "speed limit" zones along Route U.S. 322 in Harrison Township, Gloucester County, were 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 U.S. 322 in Harrison Township, Gloucester 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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Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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]):

16:28-1.20 Route U.S. 322

(a) The rate of speed designated for the certain part of State highway Route U.S. 322 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Gloucester County:

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

(3) Harrison Township:

[(A) Zone 1: 50 miles per hour between the Harrison Township-Woolwich Township line and the westernmost intersection of Route N.J. 45 (approximate mileposts 8.46 to 10.85); thence on Route N.J. 45 (between mileposts 10.85 to 11.24); thence

(B) Zone 2: 30 miles per hour between the easternmost intersection of Route N.J. 45 and the intersection of Mill Road-Mullica Hill Road (approximate mileposts 11.24 to 11.39); thence

(C) Zone 3: 35 miles per hour between the intersections of Mill Road-Mullica Hill Road and 250 feet west of Hazelton Terrace (approximate mileposts 11.39 to 11.67); thence

(D) Zone 4: 50 miles per hour between 250 feet west of Hazelton Terrace and 1,050 feet west of Barnsboro-Elmer Road (Co. Rd. 609) (approximate mileposts 11.67 to 14.35); thence

(E) Zone 5: 40 miles per hour between 1,050 feet west of Barnsboro-Elmer Road (Co. Rd. 609) and Richwood-Aura Road (Co. Rd. 667) (approximate mileposts 14.35 to 14.86); thence

(F) Zone 6: 50 miles per hour between Richwood-Aura Road (Co. Rd. 667) and 2,750 feet east of Route N.J. 55 (approximate mileposts 14.86 to 15.93); thence

(G) Zone 7: 45 miles per hour between 2,750 feet east of Route N.J. 55 and the Harrison Township-Glassboro Borough line (approximate mileposts 15.93 to 16.10); thence]

(A) Zone 1: 50 miles per hour between the Harrison Township-Woolwich Township corporate line and 300 feet west of Hastings Drive (approximate mileposts 8.46 to 10.00); thence

(B) Zone 2: 45 miles per hour between 300 feet west of Hastings Drive and 1,200 feet west of the westernmost intersection of Route N.J. 45 (approximate mileposts 10.00 to 10.60); thence

(C) Zone 3: 35 miles per hour between 1,200 feet west of the westernmost intersection of Route N.J. 45 and the westernmost intersection of Route N.J. 45 (approximate mileposts 10.60 to 10.85); thence

(NOTE: Between mileposts 10.85 to 11.24, see N.J.A.C. 16:28-1.96.)

(D) Zone 4: 30 miles per hour between the easternmost intersection of Route N.J. 45 and the intersection of Mill Road-Mullica Hill Road (approximate mileposts 11.24 to 11.39); thence

(E) Zone 5: 35 miles per hour between the intersection of Mill Road-Mullica Hill Road and 250 feet west of Hazelton Terrace (approximate mileposts 11.39 to 11.67); thence

(F) Zone 6: 45 miles per hour between 250 feet west of Hazelton Terrace and Griffin Road (approximate mileposts 11.67 to 13.10); thence

(G) Zone 7: 50 miles per hour between Griffin Road and 1,050 feet west of Barnsboro-Elmer Road (County Road 609) (approximate mileposts 13.10 to 14.35); thence

(H) Zone 8: 40 miles per hour between 1,050 feet west of Barnsboro-Elmer Road (County Road 609) and Richwood-Aura Road (County Road 667) (approximate mileposts 14.35 to 14.86); thence

(I) Zone 9: 50 miles per hour between Richwood-Aura Road (County Road 667) and 2,750 feet east of Route N.J. 55 (approximate mileposts 14.86 to 15.93); thence

(J) Zone 10: 45 miles per hour between 2,750 feet east of Route N.J. 55 and the Harrison Township-Glassboro Borough corporate line (approximate mileposts 15.93 to 16.10); thence

(4)-(5) (No change.)

ii. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 18

East Brunswick Township, Middlesex County

Proposed Amendment: N.J.A.C. 16:28-1.23

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 1995-332.

Submit comments by July 5, 1995 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. 16:28-1.23 to revise certain "speed limit" zones along Route N.J. 18 in the Township of East Brunswick, Middlesex County, 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 Township of East Brunswick in a letter dated October 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 concluded that revising certain "speed limit" zones along Route N.J. 18 in the Township of East Brunswick, Middlesex County, 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 revised "speed limit" zone along Route N.J. 18 in East Brunswick Township, Middlesex 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.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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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]):

16:28-1.23 Route 18

(a) The rate of speed designated for the certain parts of State highway Route 18 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1.-3. (No change.)

4. Zone 2:

i. (No change.)

ii. East Brunswick Township: [Fifty] **45** miles per hour between the northernmost Old Bridge Township-southernmost East Brunswick Township **corporate** line and 800 feet north of [Schoolhouse Lane] **Naricon Place** ([Milepost] **approximate milepost** 34.78 to 40.08)**; thence**

iii. 40 miles per hour between 800 feet north of Naricon Place and the northernmost East Brunswick Township-southernmost City of New Brunswick corporate line (approximate mileposts 40.08 to 40.26).

5. Zone 3:

[i. Forty miles per hour between 800 feet north of Schoolhouse Lane and the northernmost East Brunswick Township-southernmost City of New Brunswick line (Milepost 40.08 to 40.26);]

Recodify existing ii. as **i.** (No change in text.)

6.-7. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAM

Speed Limits

Route U.S. 9W

Englewood Cliffs Borough, Bergen County

Proposed Amendment: N.J.A.C. 16:28-1.123

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 1995-331.

Submit comments by July 5, 1995 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. 16:28-1.123 to establish a "school speed limit" zone along Route U.S. 9W in the Englewood Cliffs Borough in Bergen County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request of the local government of the Borough of Englewood Cliffs in a letter from Acting Chief of Police Patrick F. Farley, dated August 12, 1994, requesting a school "speed limit" zone be established in the vicinity of the Japanese Children Society School, 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 concluded that establishing a school "speed limit" zone along Route U.S. 9W in the Borough of Englewood Cliffs, Bergen County, 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 school "speed limit" zone along Route U.S. 9W in Englewood Cliffs Borough, Bergen 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 school "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.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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 primary 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]):

16:28-1.123 Route U.S. 9W

(a) The rate of speed designated for the certain parts of State highway Route U.S. 9W described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Bergen County:

1. (No change.)

2. Borough of Englewood Cliffs:

(A) Zone 1: 35 [mph] **miles per hour** between the Fort Lee Borough-Englewood Cliffs Borough line and Middlesex Avenue (approximate mileposts 0.95 to 1.27); **except for 25 miles per hour when passing through the Japanese Children Society 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

(B)-(C) (No change.)

3.-4. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 45

Woodstown Borough, County of Salem

Proposed Amendment: N.J.A.C. 16:28A-1.31

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 1995-324.

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Submit comments by July 5, 1995 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-1.31 to establish no stopping or standing zones and time limit parking restrictions on Route N.J. 45 in the Borough of Woodstown, Salem County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Borough of Woodstown in a Resolution, adopted on March 14, 1995, 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 no stopping or standing zones and time limit parking restrictions, Monday through Friday between the hours of 8:00 A.M. and 8:00 P.M. along Route N.J. 45 in the Borough of Woodstown, Salem County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing zones and time limit parking restrictions along Route N.J. 45 in Woodstown Borough, Salem County, to improve traffic flow and enhance 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 and 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. 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.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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]):

16:28A-1.31 Route 45

(a) The certain parts of State highway Route 45 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-6. (No change.)

7. No stopping or standing in Woodstown Borough, Salem County:

i. Along the northbound (easterly) side:

(1) Beginning at a point 315 feet south of the southerly curb line of Grant Street to a point 324 feet southerly therefrom.

(2) Beginning at the northerly curb line of Routes U.S. 40-N.J. 45 (East-West Avenues) to a point 110 feet northerly therefrom.

ii. Along the southbound (westerly) side:

(1) Beginning at a point 374 feet south of the southerly curb line of West Grant Street to a point 382 feet southerly therefrom.

(2) Beginning at the northerly curb line of Routes U.S. 40-N.J. 45 (East-West Avenues) to a point 56 feet northerly therefrom.

(b) (No change.)

(c) The certain parts of State highway Route 45 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified below. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1.-2. (No change.)

3. In the Borough of Woodstown, Salem County:

i. Along the northbound (easterly) side:

(1) Two hour time limit parking beginning at a point 640 feet from the southerly curb line of East Grant Street to a point 110 feet north of Routes U.S. 40-N.J. 45 (East-West Avenues), Monday through Friday between the hours of 8:00 A.M. and 8:00 P.M.

ii. Along the southbound (westerly) side:

(1) Two hour time limit parking beginning at a point 760 feet south of the southerly curb line of West Grant Street to a point 56 feet north of Routes U.S. 40-N.J. 45 (East-West Avenues), Monday through Friday between the hours of 8:00 A.M. and 8:00 P.M.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Fire Lane North (Under State Jurisdiction)

Southampton Township, Burlington County

Proposed New Rule: N.J.A.C. 16:28-1.84

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 1995-325.

Submit comments by July 5, 1995 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 is proposing a new rule at N.J.A.C. 16:28-1.84 to establish certain "speed limit" zones along Fire Lane North (under State jurisdiction) in the Township of Southampton in Burlington County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon request of Mr. Richard M. Balgowan, Regional Maintenance Engineer, Region IV, of the Department of Transportation, 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 concluded that establishing certain "speed limit" zones along Fire Lane North (under State jurisdiction) in the Township of Southampton, Burlington County, was warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been established.

Social Impact

The proposed new rule will establish certain "speed limit" zones along Fire Lane North (under State jurisdiction) in Southampton Township, Burlington 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

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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.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rule follows:

16:28-1.84 Fire Lane North (under State jurisdiction)

(a) The rate of speed designated for the certain part of Fire Lane North (under State jurisdiction), described in this section, shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i. In Burlington County:

(1) In Southampton Township:

(A) 25 miles per hour between Burrs Mill Road and the easternmost intersection of Route N.J. 70.

(a)

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

Speed Limits
Fire Lane South (Under State Jurisdiction)
Southampton Township, Burlington County
Proposed New Rule: N.J.A.C. 16:28-1.85

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 1995-326.

Submit comments by July 5, 1995 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 is proposing a new rule at N.J.A.C. 16:28-1.85 to establish certain "speed limit" zones along Fire Lane South (under State jurisdiction) in the Township of Southampton in Burlington County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon request of Mr. Richard M. Balgowan, Regional Maintenance Engineer, Region IV, of the Department of Transportation, 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 concluded that establishing certain "speed limit" zones along Fire Lane South (under State jurisdiction) in the Township of Southampton, Burlington County, was warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been established.

Social Impact

The proposed new rule will establish certain "speed limit" zones along Fire Lane South (under State jurisdiction) in Southampton Township, Burlington 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.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rule follows:

16:28-1.85 Fire Lane South (under State jurisdiction)

(a) The rate of speed designated for the certain part of Fire Lane South (under State jurisdiction), described in this section, shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i. In Burlington County:

(1) In Southampton Township:

(A) 25 miles per hour between Burrs Mill Road and 6,825 feet east of Burrs Mill Road.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAM

Restricted Parking and Stopping
Route U.S. 40
Woodstown Borough, County of Salem
Proposed Amendment: N.J.A.C. 16:28A-1.28

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 1995-327.

Submit comments by July 5, 1995 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-1.28 to establish no stopping or standing zones and time limit parking restrictions on Route U.S. 40 in Woodstown Borough, Salem County. The

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provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the local government of the Borough of Woodstown in a Resolution adopted on March 14, 1995, 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 no stopping or standing zones and time limit parking restrictions along Route U.S. 40 in Woodstown Borough, Salem County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing zones and time limit parking restrictions along Route U.S. 40 in Woodstown Borough, Salem County, to improve traffic flow and enhance 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 and 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. 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.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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]):

16:28A-1.28 Route U.S. 40

(a) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-9. (No change.)

10. No stopping or standing in Woodstown Borough, Salem County:

i. Along the eastbound (southerly) side:

(1) Beginning at the easterly curb line of Main Street to a point 80 feet easterly therefrom.

ii. Along the westbound (northerly) side:

(1) Beginning at the easterly curb line of Main Street to Bullet Lane.

(b) (No change.)

(c) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified below. In accordance with the provisions of N.J.S.A. 39:4-198, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. In the Borough of Woodstown, Salem County:

i. Along both sides:

(1) Two hour time limit parking between Main Street and Spring Garden Street, Monday through Friday between the hours of 8:00 A.M. and 8:00 P.M.

(2) Two hour time limit parking between West Maple Avenue and the Woodstown Borough-Pilesgrove Township corporate line, Monday through Friday between the hours of 8:00 A.M. and 8:00 P.M.

ii. Along the eastbound (southerly) side:

(1) Beginning at a point 80 feet east of the easterly curb line of Main Street to West Maple Avenue, Monday through Friday between the hours of 8:00 A.M. and 8:00 P.M.

iii. Along the westbound (northerly) side:

(1) Beginning at a point 250 feet east of the easterly curb line of Main Street to West Maple Avenue, Monday through Friday between the hours of 8:00 A.M. to 8:00 P.M.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAM
Restricted Parking and Stopping
Route U.S. 40-N.J. 45
Woodstown Borough, County of Salem
Proposed Amendment: N.J.A.C. 16:28A-1.108

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 1995-328.

Submit comments by July 5, 1995 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-1.108 to establish a no stopping or standing zone on Route U.S. 40-N.J. 45 in the Borough of Woodstown, Salem County. The provisions of this 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 Borough of Woodstown in a Resolution adopted on March 14, 1995, 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 no stopping or standing zone along Route U.S. 40-N.J. 45 in the Borough of Woodstown, Salem County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing restrictions along Route U.S. 40-N.J. 45 in Woodstown Borough, Salem County, to improve traffic flow and enhance 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 appropriate restriction zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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.

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

16:28A-1.108 Route U.S. 40-N.J. 45

(a) The certain parts of Route U.S. 40-N.J. 45 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

(1) (No change.)

2. No stopping or standing in Woodstown Borough, Salem County on both sides from the westerly curb line of Main Street to a point 150 feet westerly therefrom.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Miscellaneous Traffic Rules
One-Way Designation
Route N.J. 29
Lambertville City, Hunterdon County
Proposed Amendment: N.J.A.C. 16:30-1.5

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-85.1 and 39:4-198.

Proposal Number: PRN 1995-333.

Submit comments by July 5, 1995 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. 16:30-1.5 to establish one-way movements along Route N.J. 29 in the City of Lambertville in Hunterdon County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. The current, outdated rule from 1976 provided for Route 29 to be one-way northerly in Lambertville pending completion of Route 29 construction.

Based upon request of the local government of the City of Lambertville in a Resolution adopted on February 27, 1995, 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 concluded that establishing one-way movements along Route N.J. 29 in the City of Lambertville, Hunterdon County, was warranted.

Appropriate signs shall be erected in areas where the "one way street zone" have been established.

Social Impact

The proposed amendment will establish one-way movements along Route N.J. 29 in the City of Lambertville 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 government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs involved in 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.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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]):

16:30-1.5 Route 29

(a) The certain parts of State highway Route 29 described [herein below] in this section shall be [and hereby are] designated for one-way traffic. [until construction on Route 29 is completed and the detour no longer needed.

1. Route 29 (Main Street) in a northerly direction between Elm Street and Cherry Street in Lambertville.]

1. In Hunterdon County:

i. In the City of Lambertville:

(1) Route 29 (South Main Street) in the southerly direction between Swan Street and Mount Hope Street (approximate mileposts 18.62 to 18.76).

TREASURY-GENERAL

(b)

STATE INVESTMENT COUNCIL

Notice of Extension of Comment Period
U.S. Common and Preferred Stocks and Issues Convertible into Common Stocks
Permissible Investments
Proposed Amendment: N.J.A.C. 17:16-41.1

Take notice that the State Investment Council is hereby extending the comment period for the proposal published in the May 1, 1995 New Jersey Register at 27 N.J.R. 1767(a) to June 17, 1995. Submit comments to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625-0290

OTHER AGENCIES

(c)

ELECTION LAW ENFORCEMENT COMMISSION

Reporting of Expenditures; Independent Expenditures
Proposed Repeal and New Rules: N.J.A.C. 19:25-12

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-6.

Proposal Number: PRN 1995-321.

A **public hearing** concerning this proposal will be held on Tuesday, June 20, 1995, at 9:15 A.M. at:
Maplewood Municipal Building
574 Valley Road
Maplewood, New Jersey

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To **reserve time to speak**, telephone the Commission offices at (609) 292-8700 by Thursday, June 15, 1995.

Submit written comments by July 5, 1995 to:

Gregory E. Nagy, Esq., Legal Director
Election Law Enforcement Commission
CN-185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, the Commission) proposes new rules and repeals concerning the reporting of expenditures and independent expenditures. This proposal is another step in the implementation of statutory changes made by Chapter 65 of the Laws of 1993, which made comprehensive amendments to "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. (hereafter, the Act), and also includes statutory changes enacted following the 1993 general election requiring payments to campaign workers to be made by check (see Chapter 370 of the Laws of 1993, codified at N.J.S.A. 19:44A-11.7). The proposed rules supersede the existing rules at N.J.A.C. 19:25-12, which are proposed for repeal.

N.J.A.C. 19:25-12.1 provides generally that an expenditure made by a reporting entity (that is, a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee) must be reported. N.J.A.C. 19:25-12.2(a) describes the information that must be reported for an expenditure, and subsection (b) addresses what constitutes an adequate description of the purpose of an expenditure.

N.J.A.C. 19:25-12.3 requires a reporting committee or a person seeking political party office to provide a candidate committee with immediate written notice of an expenditure made on behalf of the candidate's candidacy, and coordinated with that candidate. A coordinated campaign expenditure is one in which the committee and the recipient candidate committee have consulted, or cooperated, or the candidate has consented to it being made. The purpose is to provide a candidate with immediate notice of any expense incurred by a committee in coordination with the candidate's candidacy. Upon receiving notice of such a coordinated expenditure, the candidate committee must report the coordinated expenditure as an "in-kind" contribution (see N.J.S.A. 19:44A-3(d) which defines "contributions" as a transfer of money or other thing of value). In subsection (c), the term "immediate written notice" is defined to mean delivered within 48 hours of the making of the coordinated expenditure. Subsection (d) notes that contributions made directly to a candidate committee are not subject to the written notification requirement.

N.J.A.C. 19:25-12.4 provides that an expenditure made by the means of a credit card must be reported as a loan from the person or entity owning the card to the reporting committee receiving goods or services purchased by use of the credit card until such time as the recipient committee reimburses the card owner. The information that must be reported is set forth in subsection (b).

N.J.A.C. 19:25-12.5 permits payment of expenditures to be made by currency provided that the reporting committee is employing a petty cash fund established pursuant to N.J.A.C. 19:25-6.4(b).

N.J.A.C. 19:25-12.6 requires that a payment to an individual to aid a candidate must be made by check, not by currency. Subsections (a) and (b) paraphrase the text of Chapter 370 of the Laws of 1993 (codified as N.J.S.A. 19:44A-11.7), and the commonly used term "street money" has been added to the title and text of the rule. Subsection (c) sets forth the information that must be reported for such expenditures.

N.J.A.C. 19:25-12.7 and 12.8 contain reporting requirements for independent expenditures, that is expenditures made without a candidate's prior consent or cooperation, or without consultation with a candidate. A person or reporting entity making an independent expenditure and required to report under the act must file a sworn statement to the effect that there was no prior consent, cooperation or consultation with a candidate (see N.J.A.C. 19:25-12.7). An individual or entity making independent expenditures of more than $1,000 in an election to support or defeat a candidate, or to aid the passage or defeat of a public question, must file reports in the same manner as a political committee (see N.J.A.C. 19:25-12.8).

Social Impact

The proposed new rules set forth the requirements for reporting expenditures by reporting committees, and requirements for reporting independent expenditures by reporting committees and by other persons or entities. The new rules implement new statutory requirements created by Chapters 65 and 370 of the Laws of the 1993, and therefore are intended to promote the salutary purposes of the acts. These salutary purposes are to ensure that there is full disclosure of all expenditures made by reporting committees and of independent expenditures by other persons or entities to aid or promote candidates, or to aid the passage or defeat of public questions, if those expenditures exceed $1,000 in an election. Independent expenditures are those made without the consultation, cooperation or consent of a candidate.

Of particular importance is the new rule requiring that a reporting committee provide immediate written notice to a candidate on whose behalf it has made a coordinated campaign expenditure. See N.J.A.C. 19:25-12.3. Under these circumstances, the reporting committee must report making the expenditure, and must provide written notice to the candidate committee of the date, the name and address of the payee, the purpose and the amount of the expenditure. The recipient candidate committee must report the committee expenditure as an in-kind (that is, other than cash) contribution, see N.J.A.C. 19:25-10.1, General provisions, and N.J.A.C. 19:25-10.4, Computation of contribution amounts. The most common example of the intended applicability of the rule is the practice of State political party committees to make expenditures on behalf of legislative candidates in general elections. Such expenditures, for example, include paying for the preparation and circulation of campaign literature in legislative districts. Under N.J.A.C. 19:25-12.3, a political party committee making such a coordinated expenditure must provide immediate written notice of the expenditure so that the recipient candidate is able to include it in his or her candidate committee reports.

The new rule concerning credit card purchases (N.J.A.C. 19:25-12.4) is similar to the existing rule at N.J.A.C. 19:25-12.2(d), but it expands on the existing rule to clarify that the person owning the credit card is making a reportable loan to the reporting committee receiving the items purchased until such time as the committee reimburses the owner for the amount charged against the owner's credit card account. A loan is subject to reporting requirements and contribution limits as a contribution, see N.J.A.C. 19:25-1.7, defining the term "contribution" to include a loan.

Also of particular interest is the new rule requiring that an expenditure to an individual which is related to a candidacy or passage or defeat of a public question must be made by check, not by currency. See N.J.A.C. 19:25-12.6. This new rule implements the new law enacted following the 1993 general election to regulate payments to campaign workers, commonly referred to as "street money," see N.J.S.A. 19:44A-11.7; P.L. 1993, c.370. The new rule supersedes the existing rule at N.J.A.C. 19:25-12.6, which required reporting of the name of each person who received a "street money" payment of $25.00 or more, but did not prohibit payment in currency. Since the new rule requires all "street money" payments to be made by check, and since each check must be made payable to the individual providing "street money" services, the name of each recipient will be reported on the reporting committee's reports regardless of the amount. See N.J.A.C. 19:25-12.6(d) requiring reporting of the name and address of the recipient of the check, who must be the payee.

In regard to independent expenditures, N.J.A.C. 19:25-12.8 has been clarified to set forth the Commission's intent that an "individual or entity" is subject to reporting if more than $1,000 is spent to support or defeat a candidate, or aid or defeat a public question. The existing rule at N.J.A.C. 19:25-12.8 used the term "person." Also, the phrase ". . . not acting in concert with any other person or committee," was deleted and replaced by the qualification that the expenditure not be made with the cooperation or prior consent of, or in consultation with, a candidate. If an expenditure is made in consultation with a candidate, (that is, if it is coordinated with the candidate), it is reportable by that candidate as an in-kind contribution by the individual or entity making it, but it is not subject to reporting as an independent expenditure.

Economic Impact

The proposed new rules are expected to result in increased compliance costs to the extent that they require all payments to individuals to be by check. See N.J.A.C. 19:25-12.6. However, this change is mandated by the Chapter 370 of the Laws of 1993 (N.J.S.A. 19:44A-11.7), and promotes full disclosure of expenditures. Compliance with other requirements, such as immediate written notification to candidates (see N.J.A.C. 19:25-12.3), reporting of credit card expenditures (see N.J.A.C. 19:25-12.4) and reporting of independent expenditures (see N.J.A.C. 19:25-12.7 and 12.8) are perceived by the Commission as clarifications of existing expenditure reporting requirements, and therefore not significantly affecting compliance costs. However, to the extent they may be perceived as creating new duties, they might result in increased reporting or recordkeeping costs.

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Executive Order No. 27 Statement

The proposed new rules are not subject to any Federal standards or requirements, and accordingly a Federal exceedance analysis is not applicable to the rulemaking.

Regulatory Flexibility Statement

The Commission's proposed new rules do not impose any requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., except to the extent that a small business may make independent expenditures of more than $1,000 in an election to support or defeat a candidate, or to aid or promote the adoption or defeat of a public question, see N.J.A.C. 19:25-12.7 and 12.8. An independent expenditure is one made without the cooperation or prior consent of, or without consultation with a candidate or existing committee. For example, expenditures to pay for newspaper advertisements costing in the aggregate over $1,000 and advocating the election or defeat of a candidate, made without the candidate's cooperation or consent, or without consultation with the candidate, is an independent expenditure. If there is consultation wih the candidate, the candidate must report the cost of the advertisements as an "in-kind" contribution from the small business, and no reporting obligation arises for the small business. However, if the advertisements are paid for independently of the candidate, the small business paying for the advertisements must file reports as a political committee, see N.J.A.C. 19:25-8.8, Political committee election fund reports.

The Commission believes that filing reports for independent expenditures will not normally require acquiring professional services or result in substantial compliance expense. In order to achieve the public purposes of uniform disclosure of the identity of all persons and entities making significant election-related expenditures, it is not possible to exempt small businesses from campaign reporting requirements when they expend more than $1,000 in an election for such expenditures. Generally, the new rules do not impose any requirements on small businesses as such, but on candidates, various types of committees, and their treasurers. Small businesses may be employed to provide goods or services to reporting candidates, committees, their treasurers, or other individuals or entities making election-related expenditures, but the recordkeeping and reporting requirements generated by the proposed new rules are on those candidates, committees, treasurers, individuals or entities.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:25-12.

Full text of the proposed new rules follows:

SUBCHAPTER 12. REPORTING OF EXPENDITURES; INDEPENDENT EXPENDITURES

19:25-12.1 General provisions

(a) An expenditure made by a candidate, candidate committee, joint candidates committee or political committee shall be reported as provided by N.J.A.C. 19:25-8, and as provided by this subchapter.

(b) An expenditure made by a continuing political committee, political party committee, or legislative leadership committee shall be reported as provided in N.J.A.C. 19:25-9, and as provided by this subchapter.

19:25-12.2 Expenditure reporting

(a) An expenditure shall be reported by providing the following information:

1. The date the expenditure was made;
2. The checking account title and number;
3. The full name and address of the payee;
4. The purpose of the expenditure; and
5. The amount of the expenditure.

(b) In describing the purpose of an expenditure pursuant to (a)4 above, the specific election-related reason for the expenditure shall be provided. Descriptions such as "operations," "campaign expense" or "reimbursement" do not satisfy the reporting requirement because they do not provide any specific election-related information. Examples of satisfactory descriptions include such information as "newspaper advertising," "telephone expense," "postage," "printing of campaign flyers," "headquarter rental" and similarly specific items.

19:25-12.3 Written notification of a coordinated expenditure

(a) Whenever a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or a legislative leadership committee makes or authorizes an expenditure on behalf of a candidate with the cooperation or prior consent of that candidate, or in consultation with or at the request or suggestion of that candidate, or of any person acting on behalf of that candidate, the committee shall provide immediate written notification to that candidate's candidate committee of the expenditure.

(b) When an individual seeking political party office makes or authorizes an expenditure on behalf of a candidate with the cooperation or prior consent of that candidate, or in consultation with or at the request or suggestion of that candidate, or of any person acting on behalf of that candidate, the individual shall provide immediate written notification to the candidate's candidate committee of the expenditure.

(c) "Immediate written notification" for the purposes of this section shall mean written notice delivered to the candidate or the candidate's candidate committee or joint candidates committee within 48 hours of the making or authorizing of the expenditure, which notice shall contain:

1. The date of the making or authorizing of the expenditure;
2. The name and address of the payee;
3. The purpose of the expenditure; and
4. The amount of the expenditure.

(d) "Expenditure on behalf of a candidate" for the purposes of this section shall mean an expenditure made to a payee or recipient other than that candidate's candidate committee or joint candidates committee and made for the purpose of aiding or promoting the candidate's candidacy, such as the purchase for a vendor of brochures advocating the candidate's election (commonly described as "in-kind contributions"). A contribution made directly to a candidate committee or joint candidates committee is not included in the meaning of "expenditure on behalf of a candidate."

19:25-12.4 Expenditures made by credit card

(a) If an expenditure is made on behalf of a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee by use of or by a charge against a credit card account that was not established in the name of that candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, the person or entity owning the credit card and who is liable for any debt charged against that credit card account shall be deemed to have made a loan to that committee subject to reporting as a loan in the amount charged until such time as the committee reimburses that person or entity for that amount.

(b) Whenever a committee pursuant to (a) above makes an expenditure to reimburse a person or entity for a charge made against that person's or entity's credit card account, that committee shall report the following information for each such charge:

1. The exact name or title of the person or entity owning the credit card account, and the name of the lending institution that issued the card;
2. The name and address of the vendor from whom the purchase was made;
3. The date of the purchase;
4. A description pursuant to N.J.A.C. 19:25-12.2(b) of the purpose of the purchase, including a specific itemization of the goods or services acquired;
5. The amount of the purchase; and
6. The name of the payee, and the number, date and amount of the reimbursement check.

(c) Payment by use of credit card reported pursuant to (a) above shall not be deemed to be in violation of N.J.S.A. 19:44A-11, requiring campaign expenditures to be made through the campaign or organizational treasurer.

19:25-12.5 Expenditures by currency; petty cash fund

Payment of expenditures by currency is permissible if the payment is made from proceeds of a petty cash fund established pursuant to N.J.A.C. 19:25-6.4(b).

19:25-12.6 Payments to individuals; "street money"

(a) Any payment to an individual which is related to efforts by or on behalf of a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee in aid of or to promote a

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candidate in an election or the passage or defeat of a public question, or to efforts directly to promote or encourage the participation of voters in an election (commonly referred to as "street money"), shall be made by check payable to such named individual.

(b) Any payment to a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, or to any other person, association or group, by a candidate or any such committee or by any other person, association or group, which payment is related to efforts in aid of or to promote the candidacy of a candidate in any election or the passage or defeat of a public question, or to efforts directly to promote or encourage the participation of voters in an election (commonly referred to as "street money"), shall be made by check payable to the named committee, person, association, or group.

(c) Payment in the form of currency for any of the purposes described in (a) and (b) above is prohibited.

(d) A payment or expenditure made for the purposes described in (a) or (b) above shall be reported by including the following information:

1. The date the expenditure was made;
2. The check number;
3. The name and address of the recipient, who shall be the payee;
4. The purpose of the expenditure, including itemization of the specific services provided by the individual-payee; and,
5. The amount of the expenditure.

19:25-12.7 Independent expenditures

(a) Independent expenditures shall be subject to all of the reporting and disclosure requirements of the act. Every person, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee making an independent expenditure and required to report under the act shall include in the reports required under the act a sworn statement on a form provided by the Commission that such independent expenditure was not made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of the candidate or any person or committee acting on behalf of the candidate.

(b) Any advertisement which is an independent expenditure shall include a clear and conspicuous statement that the advertisement is not authorized by any candidate and shall state the name and address of the person or organization making the expenditure.

19:25-12.8 Reporting of independent expenditures

Any individual or entity expending from his, her or its own funds more than $1,000 in an election to support or defeat a candidate or more than $1,000 to aid the passage or defeat of a public question, and who made such expenditure pursuant to N.J.A.C. 19:25-12.7, that is, made the expenditure without the cooperation or prior consent of, or without consultation with or at the request or suggestion of, a candidate or any person or committee acting on behalf of the candidate, shall report all such expenditures at the same time and in the same manner as a political committee subject to the provisions of N.J.S.A. 19:44A-8.

19:25-12.9 Expenditures for pre-candidacy activity

When an individual becomes a candidate, all funds received or payments made in connection with his or her testing the waters activity prior to becoming a candidate shall be considered contributions or expenditures under the act and shall be reported in accordance with the applicable reporting requirements in the first report filed by such candidate's candidate committee or joint candidates committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received and all expenditures made in connection with the individual's testing the waters activity prior to becoming a candidate.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Credit and Check Procedures
Proposed Amendments: N.J.A.C. 19:40-1.2; 19:45-1.1, 1.15, 1.24, 1.25, 1.26, 1.27 and 1.28

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

Authority: N.J.S.A. 5:12-69(a), 70(g), 99(a) and 101 (d), (g) and (k).

Proposal Number: PRN 1995-343.

Submit written comments by July 5, 1995, to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

These amendments would codify several statutory changes to the Casino Control Act, N.J.S.A. 5:12-1 et seq. (the Act).

1. Section 101(k) of the Act as amended permits a casino licensee to issue credit to a person prior to completion of all required credit checks and verifications. However, if any checks accepted by a casino licensee pursuant to that subsection subsequently prove uncollectible, they may not be deducted from gross revenue by the licensee.

Proposed N.J.A.C. 19:45-1.27(j) would implement this statutory amendment. Since any check accepted in this manner could not be deducted from gross revenue if it proves uncollectible, N.J.A.C. 19:45-1.27(j)2(ii) also provides that such checks could not be included in the "Provision for Uncollectible Patron Checks," pursuant to N.J.A.C. 19:54-1.6(a)2.

2. Section 101(d)4 of the Act as amended permits an attorney or casino key employee of a casino licensee to present a patron's check directly to his or her bank for payment. Proposed N.J.A.C. 19:45-1.28(g) would implement this statutory amendment.

The proposed amendment also includes certain safeguards for checks negotiated in this fashion, by requiring approved internal controls for documenting the release of the check from the cashiers' cage, and by requiring prompt transfer of the funds from the patron's bank to the casino licensee, by wire transfer or a bank check made payable to the casino licensee.

This option could expedite the payment of some patron checks, which would normally be required to be deposited in the casino licensee's bank account for collection.

3. Section 101(g)1(e) of the Act as amended permits a casino licensee to accept a check issued by an affiliate of a casino licensee that holds a gaming license in any jurisdiction.

Proposed amendments to N.J.A.C. 19:45-1.24 through 1.26 would implement this statutory change, and would add the defined term "casino affiliate check" to N.J.A.C. 19:40-1.2; the term "affiliate" is defined in section 2.1 of the Act.

Although the statutory amendment could be construed to permit a casino licensee to accept a casino affiliate check issued by an affiliate of any New Jersey casino licensee, it is possible that a New Jersey casino licensee may wish to accept other checks issued by its own affiliates. Accordingly, the definition of "casino affiliate check" is being proposed in the alternative, with Alternative A being the broader definition and alternative B being the narrower one.

As with a casino check, the patron's identity as well as the check itself, must be verified prior to acceptance of a casino affiliate check. See N.J.A.C. 19:45-1.25.

4. Unlike an individual slot machine jackpot payment, which is paid by a casino licensee, annuity jackpot payments are paid by an annuity jackpot trust. See N.J.A.C. 19:45-1.40B.

Although as defined in section 2.2 of the Act, an annuity jackpot trust is comprised solely of casino licensees, the trust itself is not a casino licensee. Thus, a check issued by it in payment of an annuity jackpot winnings is not a "casino check," as defined in N.J.A.C. 19:40-1.2, and could not be negotiated at the cashiers' cage.

Section 101(g)1(d) of the Act as amended now permits casino licensees to accept an annuity jackpot trust check from a patron. Proposed amendments to

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N.J.A.C. 19:45-1.1 and 1.25 would implement this statutory change, requiring the same safeguards and verification procedures presently required for the negotiation of casino checks.

Unlike a casino licensee, an annuity jackpot trust may not always have a cashier or other person available to verify its checks. Thus, N.J.A.C. 19:45-1.25(f) would simply require the general cashier of a casino licensee accepting such a check to confirm the issuance of the check by the annuity jackpot trust, in "a manner approved by the Commission," which could possibly include reviewing a recent list of issued checks or a computerized database prepared and maintained by the annuity jackpot trust.

Social Impact

As a result of these proposed changes, some patrons may now be able to obtain credit more swiftly than previously permitted. Casino licensees may also be able to obtain payment of patron checks more quickly by presenting them for payment directly to the patron's bank.

These changes may also make it more convenient for patrons to negotiate certain additional types of checks (casino affiliate checks and annuity jackpot trust checks).

As noted above, these amendments simply codify legislative changes, and do not reflect any social judgments or policy shifts on the part of the Commission.

Economic Impact

These changes may have an economic impact upon casinos licensees and their patrons who gamble on credit, as credit may now be obtained more swiftly.

These amendments may have various economic impacts upon casino licensees. The ability to present patron checks directly to the patron's bank may enable a casino licensee to collect its debts more quickly and efficiently. But some checks accepted by casinos licensees without completion of verification may prove to be uncollectible, which may result in a negative economic impact for those licensees. However, since these uncollectible debts would not be permitted to be deducted from gross income, there should be no economic impact upon the Commission or the State, which collects an eight percent tax on gross revenue.

The ability to accept additional types of checks (casino affiliate checks and annuity jackpot trust checks) may also have a favorable economic impact upon casino licensees.

These amendments would impose some additional recordkeeping and compliance requirements upon casino licensees and annuity jackpot trusts, which may incur additional costs as a result. However, such requirements have been uniformly imposed upon all casino licensees which issue and cash casino checks. The additional types of checks now permitted to be accepted are quite similar to casino checks; to maintain this uniformity, and to preserve the integrity and security of the casino check system, casino affiliate checks, annuity jackpot trust checks and the annuity jackpot trusts which issue them should also be subject to the same confirmation and verification requirements.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this proposal are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required. The proposed amendments would affect casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14b-16 et seq.

The amendments would also affect annuity jackpot trusts, which are comprised solely of casino licensees, but are not casino licensees. However, as noted above, in order to maintain the integrity and security of the casino check system, annuity jackpot trusts should be required to comply with verification requirements equivalent to those imposed upon participating casino licensees; accordingly, no exemption has been made for them in this instance.

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

19:40-1.2 Definitions

(a) (No change.)

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

. . .

ALTERNATIVE A

"Casino affiliate check" means a check issued by a person that is an affiliate of a New Jersey casino licensee and holds a gaming license in any other jurisdiction. A casino affiliate check shall be drawn on the bank account of the affiliate, be made payable only to the person presenting the check, and shall not contain any other endorsements.

ALTERNATIVE B

"Casino affiliate check" means a check issued by a person that holds a gaming license in any other jurisdiction and that is an affiliate of the New Jersey casino licensee which is accepting the check. A casino affiliate check shall be drawn on the bank account of the affiliate, be made payable only to the person presenting the check, and shall not contain any other endorsements.

. . .

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:

"Annuity jackpot trust check" means a check issued by an annuity jackpot trust, as defined in N.J.S.A. 5:12-2.2, in payment of winnings from an annuity jackpot. An annuity jackpot trust check shall be made payable only to the person presenting the check and shall not contain any other endorsements.

. . .

19:45-1.15 Accounting controls for the cashiers' cage, satellite cages, master coin bank and coin vault

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

(c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash and, at the discretion of the casino licensee, slot tokens, and such cashiers' functions shall include, but are not limited to, the following:

i. Receive cash, cash equivalents, patron checks, gaming chips, complimentary cash gifts, casino checks, **casino affiliate checks, annuity jackpot trust checks,** slot tokens and gaming plaques from patrons for check consolidations, total or partial redemptions or substitutions;

ii. (No change.)

iii. Receive cash, [traveler's checks and other] cash equivalents, **casino checks, casino affiliate checks and annuity jackpot trust checks** from patrons in exchange for currency, slot tokens or coin;

iv. (No change.)

v. Receive cash, cash equivalents, **casino checks, casino affiliate checks, annuity jackpot trust checks,** slot tokens, prize tokens and gaming chips from patrons in exchange for Customer Deposit Forms;

vi.-xv. (No change.)

2.-5. (No change.)

(d)-(f) (No change.)

19:45-1.24 Procedure for acceptance, accounting for and redemption of patron cash deposits

(a) Whenever a patron requests a casino licensee to hold his or her cash, cash equivalent[s], **casino check, casino affiliate check, annuity jackpot trust check,** complimentary cash gift[s], slot tokens, prize tokens, gaming chips or plaques for subsequent use, the patron shall deliver the cash, cash equivalent[s], **casino check, casino affiliate check, annuity jackpot trust check,** complimentary cash gift[s], slot tokens, prize tokens, gaming chips or plaques to a general cashier who, after converting any of those non-cash items into cash, shall deposit the cash for credit to the patron cash deposit account established for that patron pursuant to this section.

(b)-(g) (No change.)

(h) On the original and duplicate of the Customer Deposit Form, or in stored data, the general cashier shall record, at a minimum, the following information:

1.-4. (No change.)

5. Nature of the amount received (cash, cash equivalent[s], **casino check, casino affiliate check, annuity jackpot trust check,**

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complimentary cash gift[s], chips, plaques, slot tokens, prize tokens or wire transfer).

(i)-(q) (No change.)

19:45-1.25 Procedure for exchange of checks submitted by gaming or simulcast wagering patrons; repurchase of cash equivalents

(a) (No change.)

(b) No casino licensee or any person licensed under the Act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the Act, may accept a check, other than a recognized travelers' check or other cash equivalent, **a casino check, a casino affiliate check, or an annuity jackpot trust check** from any person to enable such person to take part in gaming or simulcast wagering activity as a player, or may give cash or cash equivalents in exchange for such check unless the requirements of this section and N.J.A.C. 19:45-1.26, 19:45-1.27, 19:45-1.28, and 19:45-1.29 concerning check cashing, redeeming, consolidating, collecting and recording procedures are observed by the casino licensee and its employees and agents. For purposes of this chapter, the term "check" when used in connection with an exchange, redemption, substitution or consolidation by a patron shall mean any draft drawn by the patron which is a "cash item" as defined in Regulation J of the Board of Governors of the Federal Reserve System, 12 C.F.R. 210.2(e), and which is drawn on an account maintained in a "depository institution" as defined in Section 19(b) of the Federal Reserve Act, 12 U.S.C. §461(b), including share drafts and drafts drawn on negotiable order of withdrawal accounts or similar accounts; the term "checking account" shall mean any account on which a "check" is drawn; and the term "bank" shall include any "depository institution" as defined in 12 U.S.C. §461(b). For purposes of this chapter, a check received from a person by cage cashiers may be presumed by the casino licensee not to be exchanged to enable such person to take part in gaming activity as a player, if the casino licensee shall cause to be posted at each general cashier station in the cashiers' cage a conspicuous sign that reads:

"By law, personal checks cannot be exchanged for currency or coin to be used for gaming or simulcasting wagering purposes."

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

(e) Cash equivalents [and], casino checks, **casino affiliate checks and annuity jackpot trust 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, **casino affiliate check or an annuity jackpot trust 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, **a casino affiliate check or an annuity jackpot trust check** issued pursuant to N.J.S.A. 5:12-101(g), the general cashier shall be required to examine [that] **the** patron's identification credentials or verify that the patron's signature recorded on the cash equivalent [or], casino check, **casino affiliate check or the annuity jackpot trust 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, **casino affiliate check or annuity jackpot trust check** which is accepted from a patron by a general cashier shall be:

i.-ii. (No change.)

4. (No change.)

(f) Prior to the acceptance of any casino check, **casino affiliate check or annuity jackpot trust check** from a patron, a general cashier shall determine the validity of such [casino] check by contacting the New Jersey casino licensee which issued the check **or by confirming, in a manner approved by the Commission, the issuance of the check by the casino licensee affiliate or the annuity jackpot trust, as the case may be,** and shall verify the following information:

1.-4. (No change.)

5. That the check represents:

i.-ii. (No change.)

iii. The winnings from slot machine payoffs; [or]

iv. The winnings from simulcast wagering[.]**;**

v. A casino affiliate check; or

vi. An annuity jackpot payment by an annuity jackpot trust pursuant to N.J.A.C. 19:45-1.40B.

(g) Each casino licensee shall maintain a casino check log **and an annuity jackpot trust check log**.

1. The general cashier of the casino licensee accepting a casino check **or casino affiliate check** shall document the verifications performed in (f) above in the casino check log and shall **also** record **therein his or her name and license number and:**

i. For a casino check, 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.]**; or**

ii. For a casino affiliate check, the name of the employee at the casino licensee affiliate providing such information and the date and time the information was obtained.

2. The general cashier of the casino licensee accepting an annuity jackpot trust check shall document the verifications performed in (f) above in the annuity jackpot trust check log, and shall record therein the manner in which the information was obtained, including, if applicable, the name of any person providing the information and the date and time the information was obtained.

[2.]**3.** 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:

i.-vi. (No change.)

vii. The reason for the check as either:

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

(3) The winnings from slot machine payoffs; [or]

(4) The winnings from simulcast wagering[.]**; or**

(5) An annuity jackpot payment by an annuity jackpot trust pursuant to N.J.A.C. 19:45-1.40B.

(h)-(p) (No change.)

19:45-1.26 Substitution, redemption and consolidation of patron checks

(a) (No change.)

(b) The drawer of an undeposited patron check may redeem it:

1. In its entirety by exchanging cash, cash equivalents, complimentary cash gifts, casino checks, **casino affiliate checks, annuity jackpot trust checks,** slot tokens, gaming chips or gaming plaques 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, **casino affiliate checks, annuity jackpot trust 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)-(h) (No change.)

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

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

(j) Notwithstanding any other provision of this section to the contrary, a casino licensee may approve, restore or increase a credit limit for a patron prior to the completion of the verifications that are otherwise required, provided that:

1. The casino licensee complies with the requirements of N.J.S.A. 5:12-101(k);

2. Any patron check accepted prior to the completion of all verifications required pursuant to this section shall not be:

i. Deducted from gross revenue pursuant to N.J.S.A. 5:12-24 if

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such check subsequently proves to be uncollectible, even if the casino licensee completes all of the required verifications prior to the deposit or presentment of the check;

ii. Included in the "Provision for Uncollectible Patron Checks" pursuant to N.J.A.C. 19:54-1.6(a)2; and

3. The casino licensee shall specify in its internal controls the manner in which any patron check that is accepted pursuant to N.J.S.A. 5:12-101(k) shall be identified.

Recodify existing (j)-(o) as **(k)-(p)** (No change in text.)

19:45-1.28 Procedure for depositing checks received from gaming patrons

(a) [All checks, unless] **Unless** redeemed or consolidated prior to the time requirements herein, **all checks** received from gaming patrons in conformity with N.J.A.C. 19:45-1.25 shall be deposited in the casino licensee's bank account **or presented directly to the patron's bank in accordance with (g) below,** in accordance with the casino licensee's normal business practice, [and such] **which** practice must be **previously** submitted in writing to both the Commission and Division[, but in no event]. **Such deposit or presentment shall occur no** later than:

1.-4. (No change.)

(b) All checks received for consolidation in conformity with N.J.A.C. 19:45-1.26 shall be deposited in the casino licensee's bank account **or presented directly to the patron's bank in accordance with (g) below,** within:

1.-3. (No change.)

(c) All checks received as part of a redemption in conformity with N.J.A.C. 19:45-1.26 shall be deposited in the casino licensee's bank account **or presented directly to the patron's bank in accordance with (g) below,** within:

1.-3. (No change.)

(d)-(f) (No change.)

(g) In accordance with N.J.S.A. 5:12-101 and its approved internal controls, a casino licensee may present a patron check directly to the patron's bank for payment.

1. All such internal controls shall include procedures for:

i. Documenting the release of the patron check from the cashiers' cage to a casino key employee of the casino licensee or to a licensed attorney, for the purpose of presentment to the patron's bank;

ii. Prompt deposit of the proceeds of the check to the casino's bank account via a wire transfer or a check drawn by the patron's bank and made payable only to the casino licensee, if the patron's check is honored and paid; and

iii. Notice to the casino licensee that the check has been paid in full by the patron's bank.

2. A patron check presented in this manner shall be considered paid in full when honored and paid by the patron's bank.

(a)

CASINO CONTROL COMMISSION

Applications

License and Registration Requirements; Persons Required to Obtain a Casino Key Employee License; Persons Required to Obtain a Casino Employee License; Employee Licensee and Registrant Age Requirements; Eligibility to Work in the United States

Reproposed New Rules: N.J.A.C. 19:41-1.1 and 1.2

Reproposed Amendments: N.J.A.C. 19:41-1.3

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 70c, 89 and 90 and P.L. 1995-18.

Proposal Number: PRN 1995-344.

Submit written comments by July 5, 1995 to:

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

The agency proposal follows:

Summary

This reproposal supersedes proposed new rules N.J.A.C. 19:41-1.1, 1.1A, 1.2 and 1.2A, published on November 7, 1994, at 26 N.J.R. 4338(b). N.J.A.C. 19:41-1.2 and 1.2A of that proposal, which set forth casino employee license and position endorsement requirements, superseded proposed new rule N.J.A.C. 19:41-1.6, published on February 22, 1994 (26 N.J.R. 910(a)).

Proposed N.J.A.C. 19:41-1.1A and 1.2A were for the most part rendered moot by recent amendments to sections 89 and 90 of the Casino Control Act ("the Act"), N.J.S.A. 5:12-1 et seq., eliminating the requirement that the Commission endorse upon each employee license the positions that the licensee is qualified to hold. (P.L. 1995-18, eff. January 25, 1995). N.J.A.C. 19:41-1.1 and 1.2 are reproposed with a number of modifications. Employee duties and functions originally specified in N.J.A.C. 19:41-1.1A and 1.2A are incorporated into reproposed N.J.A.C. 19:41-1.1 and 1.2. N.J.A.C. 19:41-1.2(a) no longer distinguishes between casino employee positions "directly related to gaming" or "not directly related to gaming," consistent with amendments to subsection 90g of the Act. The reproposals also conform to amendments to section 102 of the Act, downgrading the requisite license for a junket representative from casino key employee to casino employee.

Other revisions resulted from written comments received from the Division of Gaming Enforcement ("Division"), the Sands Hotel & Casino ("the Sands") and TropWorld Casino and Entertainment Resort ("TropWorld"), as well as the input of a committee comprised of representatives of the Commission, the Division and the casino industry. For example, several casino licensees objected to a proposed standard requiring casino employee licensure for each secretary reporting to the head of a mandatory casino department (see N.J.A.C. 19:41-1.11). The Commission agrees that this provision should contemplate the duties and responsibilities of each particular department, and that the job functions of the secretaries to the supervisors of only the following departments require casino employee licensure: surveillance, internal audit, casino accounting and credit.

The Commission also received comments from the casino industry objecting to the salary criteria for key employee licensure, proposed as N.J.A.C. 19:41-1.1(b)2 and 3. The Sands and others argued that while duties and responsibilities directly implicate regulatory concerns, salary levels do not. The Commission's experience has shown that salary levels are often an indicator of level of responsibility. However, the Commission has agreed that salary should not be included in the reproposal as a direct criteria for key licensure. Rather, the Commission intends, in a future proposal, to amend its rules regarding jobs compendium submissions so as to require each casino licensee to submit, on an annual basis, a list of all positions with total compensation in excess of $100,000. Such reporting requirements will enable the Commission to examine the job functions of such employees to determine whether the duties and responsibilities of the particular position indicate that casino key employee licensure is appropriate.

The Sands suggested that N.J.A.C. 19:41-1.1(a)3 be revised to refer to those who "develop and implement," rather than "develop or administer," policy and long-range plans, contending that "any number of individuals at all levels are required to administer policy." Various other casino licensees objected to the term "administer." The reproposal retains the term "administer." The common meaning of that term is "to manage" or "to have executive charge of." As such, the term was intentionally utilized to suggest the authority to manage, to bring about or to accomplish policy or long-range plans. The Sands' alternative is inappropriate; numerous individuals at all levels "implement" or "carry out" policy.

Several provisions are omitted from the reproposal in response to comments that the proposed language was too broad and beyond the intended scope of the rules. For example, the reproposal no longer requires casino employee licensure for individuals who view player rating information systems. Proposed N.J.A.C. 19:41-1.2(a)8, which referred to those who "assist in the operation of a casino," including those who "hire, coordinate and train personnel or participate in the preparation of the casino budget," is likewise omitted.

Reproposed N.J.A.C. 19:41-1.2(a)4 revises the language previously proposed as N.J.A.C. 19:41-1.2A(b)1 to clarify which persons in the casino accounting department and the internal audit department are required to obtain an employee license. Reproposed N.J.A.C. 19:41-1.2(a)13, persons who

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analyze casino operations data, is similarly revised to clarify the scope of the provision previously proposed as N.J.A.C. 19:41-1.2(a)4. N.J.A.C. 19:41-1.2(a)18 is revised to correctly refer to persons who process or maintain information on the "redemption of counterchecks" rather than the "collection of checks."

Other comments did not result in changes upon reproposal. N.J.A.C. 19:41-1.2(a)7 covers employees who develop marketing programs to promote casino gaming. The Sands commented that certain employees "formulate" ideas, but others such as cash control and income control clerks participate in the "planning of the implementation of such programs after they are developed by the marketing departments." The Sands suggested revising the provision to clarify that it pertains to the "creative thinkers" in the marketing departments. The proposal expressly refers to those who "develop"—or in the commentor's words, "formulate"—marketing programs, not those who participate in implementation of the programs after they are developed.

The Sands also commented that income and cash control clerks and their supervisors are involved in the distribution or inventory of match play coupons but have no role in the redemption or accounting of such coupons. The Sands suggested an exception in N.J.A.C. 19:41-1.2(a)17 for "cash control and income control employees involved either in the initial inventory or distribution function or in the reconciliation process after preparation of the master gaming report." N.J.A.C. 19:41-1.2(a)9 accurately reflects the Commission's intent to require casino employee licensure for anyone involved in the "distribution or inventory" of coupons considered in the calculation of gross revenue.

N.J.A.C. 19:41-1.2(a)14 requires an employee license for any person who enters data in gaming-related computer systems. The Sands commented that hotel income control clerks enter adjustments in the complimentary system reporting database, and that members of the finance department enter data derived from gaming operations into the financial reporting system. It was suggested that "gaming related computer systems" be confined to "employees within the pits and casino cages entering data accounting for transactions necessary for the actual conduct of gaming." The Commission's intent is to capture any person whose duties involve entering data that is gaming-related, and this is reflected in the proposed language.

N.J.A.C. 19:41-1.1(a)3 requires a casino key employee license for persons with the authority to develop or administer policy or long-range plans or to make discretionary decisions regulating the management of an approved hotel. The Division suggested that all positions held by hotel employees which will now require or continue to require a key license should be enumerated in the regulation. The Commission disagrees. N.J.A.C. 19:41-1.1(a)3 describes a level of responsibility and authority that requires key licensure, as do paragraphs (a)1 and 2. The new rule specifies several examples of these types of positions, but is not intended to provide an exclusive, comprehensive listing of every position within each category.

Reproposed amendments to N.J.A.C. 19:41-1.3 reflect legislative amendments to section 91 of the Act limiting registration to "casino service employees." See N.J.S.A. 5:12-11.1. In light of this statutory change, rules originally published as N.J.A.C. 19:41-1.6, Casino hotel employee registration, are not included herein but will be the subject of a future proposal. Previously proposed amendments to N.J.A.C. 19:41-1.8 and 19:45-1.12 are not reproposed. The former has since been proposed for repeal in response to statutory revisions, and proposed amendments to the latter were separately proposed. See 27 N.J.R. 1162(a).

Social Impact

Casino licensees and the regulatory agencies should benefit from the promulgation of express regulatory standards for employee licensure. The proposed rules specify the level of employee license for persons employed to perform enumerated duties and responsibilities. It can be expected that the clarification and codification of these standards may simplify the submission and review of employee-related submissions. Also, persons who are employed in the industry, or who intend to seek employment therein, will have available a standardized listing of the requisite level of licensure for various casino employee positions.

Economic Impact

The proposed license standards, in conjunction with the recent statutory changes, may be anticipated to impact upon some persons employed by casino licensees. As a result of revised licensing standards, some persons will be able to "downgrade" to a lower level credential, with a lesser license fee. Conversely, some persons may be required to obtain a higher level license credential, with an accompanying increase in license fees incurred.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Casino Control Commission are dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The reproposed new rules and amendments affect casino licensees as well as casino key employee and casino employee licensees and applicants. None of these persons qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:41-1.1 Persons required to obtain a casino key employee license

(a) Any natural person who will be employed by a casino licensee in a position that includes any responsibility or authority listed below, regardless of job title, shall be required to hold, prior to such employment, a current and valid casino key employee license issued in accordance with N.J.S.A. 5:12-89:

1. The supervision of specific areas of casino or simulcasting operations. Such positions shall include, without limitation, persons who:

i. Function as a casino shift manager in accordance with N.J.A.C. 19:45-1.12(b)8;

ii. Function as a pit boss in accordance with N.J.A.C. 19:45-1.12(b)6;

iii. Function as a poker shift supervisor in accordance with N.J.A.C. 19:45-1.12(b)7;

iv. Function as a slot shift manager in accordance with N.J.A.C. 19:45-1.12(h)4;

v. Supervise the repair and maintenance of slot machines and bill changers;

vi. Supervise surveillance investigations or the operation of the surveillance department during a shift;

vii. Supervise security investigations or the operation of the security department during a shift;

viii. Function as a case manager in accordance with N.J.A.C. 19:45-1.11(b)8 or 9;

ix. Supervise the operation of the cashiers' cage, table games cage or slot machine cage during a shift. Persons who supervise the operation of a cashiers' cage, table games cage or slot machine cage, in a position directly subordinate to the cage shift manager, shall be required to obtain a key license where the organization of the cage operations, the size of the casino operation, the nature and volume of the transactions performed by the cage and the number and locations of cage operations indicate that such person exercises a comparable level of responsibility and authority;

x. Supervise the hard count or soft count room;

xi. Supervise the patron check collection unit;

xii. Function as a simulcast counter shift supervisor in accordance with N.J.A.C. 19:45-1.12(i)2; or

xiii. Function as a keno manager or keno supervisor;

2. The authority to develop or administer policy or long-range plans or to make discretionary decisions regulating casino or simulcast facility operations. Such positions shall include, without limitation, persons who:

i. Function as an officer or comparable non-corporate employee of the casino licensee;

ii. Function as a casino manager in accordance with N.J.A.C. 19:45-1.11(b)4 and 1.12(b)9;

iii. Function as a slot department manager in accordance with N.J.A.C. 19:45-1.11(b)5 and 1.12(h)5;

iv. Function as a director of surveillance in accordance with N.J.A.C. 19:45-1.11(b)1;

v. Function as a director of security in accordance with N.J.A.C. 19:45-1.11(b)7;

vi. Function as a controller in accordance with N.J.A.C. 19:45-1.11(b)8;

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vii. Function as a credit manager in accordance with N.J.A.C. 19:45-1.11(b)6;

viii. Function as an audit department executive in accordance with N.J.A.C. 19:45-1.11(b)2;

ix. Function as an MIS department manager in accordance with N.J.A.C. 19:45-1.11(b)3;

x. Function as a simulcast counter manager in accordance with N.J.A.C. 19:45-1.12(i)3;

xi. Manage a marketing department;

xii. Function as an assistant manager of a mandatory casino department;

xiii. Function as an equal opportunity officer in accordance with N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53-1.4; or

xiv. Manage casino administrative operations; or

3. The authority to develop or administer policy or long-range plans or to make discretionary decisions regulating the management of an approved hotel. Such positions shall include, without limitation, persons who:

i. Manage the operation of the hotel;

ii. Manage the entertainment activities of the casino licensee;

iii. Manage the food and beverage operations of the casino licensee; and

iv. Manage the human resource activities of the casino licensee.

(b) In addition to the persons required to hold a casino key employee license pursuant to (a) above, any natural person who will be employed in a position designated by the Commission, for reasons consistent with the policies of the Act, as a casino key employee in the jobs compendium of a casino licensee shall be required to hold, prior to such employment, a current and valid casino key employee license issued in accordance with N.J.S.A. 5:12-89. Such positions shall include, without limitation, any employee of a casino licensee who:

1. Is required to be qualified pursuant to N.J.S.A. 5:12-85c;

2. Will provide legal representation for the casino licensee in matters before the Commission or provide legal counsel regarding compliance with the Act or the rules of the Commission;

3. Will purchase or contract for goods and services involving an annual expenditure of $10,000 or more;

4. May authorize the issuance of patron credit;

5. May authorize the issuance of cash complimentaries in the amount of $10,000 or more in accordance with N.J.A.C. 19:45-1.9B;

6. Will serve as a compliance officer in accordance with N.J.A.C. 19:45-1.11; and

7. Will supervise an employee who is required to be licensed as a casino key employee.

19:41-1.2 Persons required to obtain a casino employee license

(a) Any natural person who will be employed in the operation of a licensed casino or a simulcasting facility, or whose employment duties predominantly involve the maintenance or operation of gaming activity or equipment and assets associated therewith, or regularly requires work in a restricted casino area shall be required to hold, prior to such employment, a current and valid casino employee license issued in accordance with N.J.S.A. 5:12-90 unless a casino key employee license is otherwise required by N.J.S.A. 5:12-9 and N.J.A.C. 19:41-1.1. Such positions shall include, without limitations, persons who:

1. Function as a dealer in accordance with N.J.A.C. 19:45-1.12(b)2;

2. Function as a boxperson in accordance with N.J.A.C. 19:45-1.12(b)4;

3. Function as a floorperson in accordance with N.J.A.C. 19:45-1.12(b)5;

4. Perform, under the supervision of an audit department executive, the duties and responsibilities of the internal audit department in accordance with N.J.A.C. 19:45-1.11(b)2, including, without limitation, the supervision of personnel in the internal audit department; the monitoring of compliance with regulations and internal controls; and the evaluation of the adequacy of accounting and administrative controls;

5. Perform, under the supervision of a controller, the duties and responsibilities of the casino accounting department in accordance with N.J.A.C. 19:45-1.11(b)8 including, without limitation, the supervision of personnel in the casino accounting department; overseeing the review, verification and recordation of casino revenue journal entries; and the processing or control of active accounting documents related to casino gaming activity;

6. Have access to active accounting documents related to casino gaming activity;

7. Conduct surveillance investigations and operations in accordance with N.J.A.C. 19:45-1.11(b)1;

8. Repair and maintain slot machines and bill changers in accordance with N.J.A.C. 19:45-1.12(h)1;

9. Assist in the operation of slot machines and bill changers, including, without limitation, persons who participate in manual jackpot payouts and fill payout reserve containers, or supervise such persons in accordance with N.J.A.C. 19:45-1.12(h)3;

10. Participate in the operation of simulcast wagering or keno wagering;

11. Identify patrons or groups of patrons to receive complimentaries based on actual patron play, authorize such complimentaries or determine the amount of such complimentaries;

12. Function as a junket representative as defined in N.J.S.A. 5:12-29.2 and N.J.A.C. 19:49-2.1;

13. Analyze casino operations data and make recommendations to casino key employee personnel relating to, without limitation, casino marketing, complimentaries, junkets, gaming, casino simulcasting, keno wagering, special events, promotions and player ratings;

14. Enter data in gaming-related computer systems or develop, maintain, install or operate gaming-related computer software systems;

15. Collect and record, pursuant to N.J.A.C. 19:45-1.29, patron checks and personal checks which are dishonored and returned by a bank;

16. Develop marketing programs to promote casino gaming including, without limitation, coupon redemption and other complimentary distribution programs;

17. Distribute, redeem, account for or inventory coupons which are considered in the calculation of gross revenue;

18. Process or maintain information on credit applications or the redemption of counterchecks;

19. Process coins, currency, gaming chips, gaming plaques, slot tokens or cash equivalents;

20. Repair or maintain the closed circuit television system equipment that is required by N.J.A.C. 19:45-1.10 as an employee of the surveillance department;

21. Are being trained to become a surveillance employee pursuant to N.J.A.C. 19:41-1.2A(b);

22. Provide physical security in a casino, casino simulcasting facility or restricted casino area;

23. Control and maintain the slot machine inventory, including replacement parts, equipment and tools used to maintain slot machines;

24. Perform as the secretary to the supervisor of the surveillance department, internal audit department, casino accounting department or credit department;

25. Repair gaming equipment other than slot machines;

26. Perform responsibilities associated with the installation, maintenance or operation of computer hardware for casino computer systems; and

27. Supervise a person required to be licensed as a casino employee.

(b) Any person who holds a current and valid casino key employee license may perform the duties and responsibilities of any position that requires a casino employee license.

19:41-1.3 Employee [licenses] **licensee and registrant age requirements; eligibility to work in the United States**

[(a)] No natural person shall be employed [in the operation of a licensed casino or a casino simulcasting facility in a supervisory capacity

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or be empowered to make discretionary decisions which regulate casino or casino simulcasting facility operations or the management of an approved hotel] **as a casino key employee pursuant to N.J.S.A. 5:12-9 and N.J.A.C. 19:41-1.1 or as a casino employee pursuant to N.J.S.A. 5:12-7 and N.J.A.C. 19:41-1.2** unless he or she is [over] 18 years of age[,] **or older, and** is a citizen of the United States or is authorized pursuant to Federal law to work in the United States[, and holds a current and valid casino key employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino key employee license:

1. Pit bosses;
2. Shift bosses;
3. Credit executives;
4. Casino cashier supervisors;
5. Casino managers;
6. Casino assistant managers;
7. Managers of casino security employees;
8. Supervisors of casino security employees;
9. Any employee of a casino licensee empowered to procure or purchase or contract for any entertainment, food, beverages, supplies, equipment, furnishings or any other goods or services whatsoever involving an annual expenditure of $500.00 or greater;
10. Junket representatives, as defined in section 102 of the Act;
11. Simulcast counter managers;
12. Simulcast counter shift supervisors;
13. Keno managers;
14. Keno supervisors; and
15. Any other employee of a casino licensee so designated by the Commission for reasons consistent with the policies of the Act.

(b) No natural person shall be employed in the operation of a licensed casino or a casino simulcasting facility or in a position whose employment duties require or authorize access to restricted casino areas unless he or she is over 18 years of age, is a citizen of the United States or is authorized pursuant to Federal law to work in the United States, and holds a current and valid casino employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino employee license:

1. Boxpersons;
2. Dealers;
3. Croupiers;
4. Floorpersons;
5. Waiters and waitresses who access restricted casino areas;
6. Any natural person employed by a casino or its agent to provide physical security in a casino hotel;
7. Casino simulcasting facility personnel involved in wagering-related activities in a casino simulcasting facility;
8. Keno writers; and
9. Any employee whatsoever of a casino licensee so designated by the Commission]. [(c)] No natural person shall be employed [to perform services or duties in the conduct of the business of an approved hotel which are not included within the definition of casino employee or casino key employee] **as a casino service employee registrant pursuant to N.J.S.A. 5:12-91** unless he or she **has attained the age required for employment by the laws of the state in which he or she will be employed, and** is a citizen of the United States or is authorized pursuant to Federal law to work in the United States [and holds a current and valid casino hotel employee registration. The following positions, without limitation, require a casino hotel employee registration:

1. Bartenders;
2. Waiters;
3. Waitresses;
4. Maintenance personnel;
5. Kitchen staff, and
6. Any employee whatsoever of a casino licensee so designated by the Commission].

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Rules of the Games
Let It Ride Poker

Proposed Amendents: N.J.A.C. 19:45-1.11 and 1.12; 19:46-1.17, 1.18 and 1.19
Proposed New Rules: N.J.A.C. 19:46-1.13H and 19:47-18

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

Authority: N.J.S.A. 5:12-5, 63(c), 69(e), 70(f), 99(a) and 100.

Proposal Number: PRN 1995-345.

Submit written comments by July 5, 1995 to:
Barbara A. Mattie, Manager
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

These proposed amendments and new rules would permit a variation of the game of poker known as "let it ride" to be played in Atlantic City casinos.

Let it ride poker is played with one deck of 52 cards on a blackjack style table and is based upon the card rankings used in five card stud poker. In let it ride poker, however, the players do not bet against each other or the dealer, but instead seek to achieve particular poker hands that have predetermined payouts.

The game begins with each player placing three equal bets on three designated betting areas. The dealer deals three cards face down to each player and three cards face down in front of the dealer. After one of the cards dealt face down in front of the dealer is discarded, the remaining two cards are known as community cards and are used by each player, in combination with the player's individual three cards, to make a five card hand.

After all cards are dealt, each player is given the option of letting the first bet "ride" or taking it back. After each player makes a decision regarding the first bet, one of the community cards is turned face up. Each player is then given the option of letting the second bet "ride" or taking it back. This second decision must be made regardless of the decision that was made concerning the first bet. After each player makes a decision regarding the second bet, the second community card is turned face up.

Regardless of the decisions made concerning the first or second bets, a player may not take back the third bet. After both community cards are turned face up, the dealer turns the cards of each player face up. The dealer then determines the payout, if any, for each of the player's wagers. All wagers on a hand that has a ranking lower than a pair of tens are losing wagers. The minimum required payouts for each type of winning poker hand are as follows: 1 to 1 for a pair of tens, jacks, queens, kings or aces; 2 to 1 for two pair; 3 to 1 for three-of-a-kind; 5 to 1 for a straight; 8 to 1 for a flush; 11 to 1 for a full house; 50 to 1 for a four-of-a-kind; 200 to 1 for a straight flush, and 1,000 to 1 for a royal flush. Notwithstanding these minimum payouts, a maximum payout of no less than $50,000 per player on a single hand may be established. A casino may choose a higher amount for the maximum payout. The cards are reshuffled after each round of play.

Proposed new rule N.J.A.C. 19:46-1.13H contains the requirements for the table that would be used in let it ride poker. Proposed amendments to N.J.A.C. 19:46-1.17, 1.18 and 1.19 set forth the card and shoe requirements for the game. The amendments to N.J.A.C. 19:45-1.11 and 1.12 address the requirements for organizational structure and supervision.

New rules N.J.A.C. 19:47-18 contain the rules of play for let it ride poker, including the payout odds and the maximum payout limit.

Social Impact

The proposed amendments and new rules are not expected to have any social impact beyond that created by the authorization of a game which is compatible with the public interest. The amendments and new rules do not reflect any social judgments made by the Commission. The implementation of this game may generate patron interest in the game, but it is unclear at this

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time whether new or additional patrons will be attracted to Atlantic City casinos as a result of the introduction of let it ride poker.

Economic Impact

The implementation of any game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs may be offset by increased casino revenues generated by the game. Moreover, to the extent that the game does generate increased casino revenues, senior and disabled citizens of New Jersey would benefit from the additional tax revenues that would be collected. But as noted above, any attempt to quantify the effects of the introduction of let it ride poker on casino revenue would be highly speculative at this time.

The amendments and new rules will also require the Commission and Division of Gaming Enforcement to incur some costs in testing and preparing to regulate the game. However, these costs are necessary to review, introduce and test the game, and the costs will be borne by the game's sponsor and the casino licensees which have agreed to test the game, as required by N.J.AC. 19:47-8.4(b).

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this proposal are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed amendments and new rules would only affect casino licensees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility statement is required.

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

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirement of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of a casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter and the operation and conduct of keno and shall be responsible for the operation and conduct of the following games:

i.-ix. (No change.)

x. Pai gow poker; [and]

xi. Poker, except as otherwise authorized by (g) below[.]**; and**

xii. Let it ride poker.

5.-10. (No change.)

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, routlette, minibaccarat, red dog, sic bo, big six, pai gow, pai gow poker**, let it ride poker** and poker table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be the second level supervisor assigned the responsibility for directly supervising the operation and conduct of a craps game, and the first level supervisor assigned the responsibility for directly supervising the operation and conduct of a baccarat, blackjack, routlette, sic bo, minibaccarat, red dog, pai gow, pai gow poker, big six, **let it ride poker** or poker game.

6. Pit boss shall be the third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a craps game and the second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of a blackjack, roulette, minibaccarat, big six, sic bo, red dog, pai gow, pai gow poker, **let it ride poker** or baccarat game.

7.-9. (No change.)

(c) Each casino licensee shall maintain the following standard levels of staffing:

1. (No change.)

2. One dealer shall be assigned to each blackjack, roulette, minibaccarat, sic bo, red dog, pai gow, pai gow poker, big six**, let it ride poker** and poker table;

3.-4. (No change.)

5. One floorperson shall supervise:

i. Not more than four blackjack, routlette, minibaccarat, sic bo, red dog**, let it ride poker** or big six tables, or any combination thereof; or

ii.-iv. (No change.)

6. (No change.)

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

19:46-1.13H Let it ride poker table; physical characteristics

(a) Let it ride poker shall be played on a table having betting positions for seven players on one side of the table and a place for the dealer on the opposite side.

(b) The cloth covering a let it ride poker table (the layout) shall be approved by the Commission and shall have imprinted thereon, at a minimum, the following;

1. The name or trade name of the casino licensee;

2. Three separate designated betting areas at each betting position for the placement of wagers in accordance with N.J.A.C. 19:47-18.6;

3. A separate designated area at each betting position for the placement of the cards of each player;

4. A separate designated area located directly in front of the table inventory container for the placement of the community cards;

5. The payout odds for all authorized wagers; and

6. The inscription indicating the payout limit per hand established by the casino licensee pursuant to N.J.A.C. 19:47-18.11.

(c) A sign shall be posted at each let it ride poker table that explains, in a manner approved by the Commission, the details of the payout limit established pursuant to N.J.A.C. 19:47-18.11.

(d) Each let it ride poker table shall have a drop box and a tip box attached to it on the same side of the table as, but on opposite sides of the dealer, in locations approved by the Commission.

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat, minibaccarat, pai gow poker, pokette, red dog, poker**, let it ride poker** and double down stud shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck. Notwithstanding the foregoing, decks of cards used to play pai gow poker shall include one additional card, a joker, which shall be identical in size and shape to every other card in such deck.

(b)-(j) (No change.)

19:46-1.18 Cards; receipt, storage, inspections, and removal from use

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

(g) Any cards which have been opened and placed on a gaming table shall be changed at least every 24 hours. In addition:

1. (No change.)

2. Cards opened for use on a pai gow poker table **or let it ride poker table** and dealt from a dealing shoe shall be changed at least every eight hours;

3. Cards opened for use on a pai gow poker table **or let it ride poker table** and dealt from the dealer's hand shall be changed at least every four hours; and

4. (No change.)

(h)-(m) (No change.)

(n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the casino security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. (No change.)

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2. The casino licensee shall also inspect:
i.-ii. (No change.)
iii. All cards used for pai gow poker **or let it ride poker**;
iv.-v. (No change.)
3.-9. (No change.)
(o)-(q) (No change.)

19:46-1.19 Dealing shoes; automatic shuffling devices
(a) (No change.)
(b) Cards used to game at blackjack, pai gow poker, minibaccarat, red dog, **let it ride poker** and double down stud shall be dealt from a manual or automated dealing shoe which shall be secured to the gaming table when the table is open for gaming activity and secured in a locked compartment when the table is not open for gaming activity. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment when the table is not open for gaming activity. Notwithstanding the foregoing, cards used to game at pai gow poker may be dealt from the dealer's hand in accordance with N.J.A.C. 19:47-11.8A.
(c) A device which automatically shuffles cards may be utilized at the game of blackjack, pai gow poker, minibaccarat, **let it ride poker** and red dog in addition to a manual or automated dealing shoe, provided that the automated card shuffling device and the procedures for shuffling and dealing the cards are submitted to and approved by the Commission.
(d)-(g) (No change.)

SUBCHAPTER 18. LET IT RIDE POKER

19:47-18.1 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:
"Community card" means any card which is initially dealt face down to a designated area in front of the table inventory container and which is used by all players to form a five card poker hand.
"Hand" means the five card poker hand formed for each player by combining the three cards dealt to the player and the two community cards.
"Let it ride" means that a player chooses not to take back a wager that may be withdrawn in accordance with the provisions of N.J.A.C. 19:47-18.10.
"Round of play" means one complete cycle of play during which all wagers have been placed, all cards have been dealt and all remaining wagers have been paid off or collected in accordance with the rules of this subchapter.
"Stub" means the remaining portion of the deck after all cards in the round of play have been dealt or delivered.
"Suit" means one of the four categories of cards: club, diamond, heart or spade.

19:47-18.2 Cards; number of decks
(a) Except as provided in (b) below, let it ride poker shall be played with one deck of cards with backs of the same color and design and one additional solid yellow or green card to be used in accordance with the procedure set forth in N.J.A.C. 19:47-18.5. The deck of cards used shall meet the requirements of N.J.A.C. 19:46-1.17.
(b) If an automated card shuffling device is used, a casino licensee shall be permitted to use a second deck of cards to play the game, provided that:
1. Each deck of cards complies with the requirements of (a) above;
2. The backs of the cards in the two decks are of different color;
3. One deck is being shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game;
4. Both decks are continuously alternated in and out of play, with each deck being used for every other round of play; and
5. The cards from only one deck shall be placed in the discard rack at any given time.

19:47-18.3 Let it ride poker rankings
(a) The rank of the cards used in let it ride poker, for the determination of winning hands, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, nine, eight, seven, six, five, four, three and two. Notwithstanding the foregoing, an ace may be used to complete a "straight flush" or "straight" formed with a two, three, four and five. All suits shall be considered equal in rank.
(b) The permissible poker hands at the game of let it ride poker, in order of highest to lowest rank, shall be:
1. "Royal flush" is a hand consisting of an ace, king, queen, jack and 10 of the same suit;
2. "Straight flush" is a hand consisting of five cards of the same suit in consecutive ranking;
3. "Four-of-a-kind" is a hand consisting of four cards of the same rank;
4. "Full house" is a hand consisting of "three-of-a-kind" and a "pair";
5. "Flush" is a hand consisting of five cards of the same suit;
6. "Straight" is a hand consisting of five cards of consecutive rank, with an ace, king, queen, jack and 10 being the highest ranking straight and an ace, two, three, four and five being the lowest ranking straight; provided, however, that an ace may not be combined with any other sequence of cards for purposes of determining a winning hand (for example, queen, king, ace, two, three);
7. "Three-of-a-kind" is a hand consisting of three cards of the same rank;
8. "Two pairs" is a hand consisting of two "pairs"; and
9. "One pair" is a hand containing two cards of the same rank.

19:47-18.4 Opening of the table for gaming
(a) After receiving a deck of cards at the table in accordance with N.J.A.C. 19:46-1.18, the dealer shall sort and inspect the cards, and the floorperson assigned to the table shall verify that inspection.
(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread out according to suit and in sequence.
(c) After the first player has been afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Once the cards have been stacked, they shall be shuffled in accordance with N.J.A.C. 19:47-18.5.
(d) If a casino licensee uses an automated card shuffling device to play the game and two decks of cards are received at the table pursuant to N.J.A.C. 19:46-1.18 and 19:47-18.2, each deck of cards shall be separately sorted, inspected, verified, spread, inspected, mixed, stacked and shuffled in accordance with the provisions of (a) through (c) above.
(e) All cards opened for use on a table and dealt from a manual or automated dealing shoe shall be changed at least once every eight hours. All cards opened for use on a table and dealt from the hand shall be changed at least every four hours.
(f) Procedures for compliance with this section shall be sumbitted to the Commission for approval.

19:47-18.5 Shuffle and cut of the cards
(a) Immediately prior to the commencement of play and after each round of play has been completed, the dealer shall shuffle the cards, either manually or by use of an automated card shuffling device, so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or device shall place the deck of cards in a single stack; provided, however, that nothing in this section shall be deemed to prohibit the use of an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the stack of cards directly into a dealing shoe.
(b) After the cards have been shuffled and stacked, the dealer shall:
1. If the cards were shuffled using an automated card shuffling device, deal or deliver the cards in accordance with the procedures set forth in N.J.A.C. 19:47-18.7, 18.8 or 18.9; or
2. If the cards were shuffled manually, cut the cards in accordance with the procedures set forth in (c) below.

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(c) If a cut of the cards is required, the dealer shall, using one hand, cut the deck by taking a stack at least 10 cards from the top of the deck and place them on top of the cover card. The dealer shall place the cards remaining in the deck on top of the stack of cards which were cut. Thereafter, the dealer shall remove the cover card and place it in the discard rack. The dealer shall then deal the cards in accordance with the procedures set forth in N.J.A.C. 19:47-18.7, 18.8 or 18.9. The cover card shall always be placed in front of the deck of cards prior to the cut of the cards by the dealer.

(d) Whenever there is no gaming activity at a let it ride poker table which is open for gaming, the cards shall be spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once a player arrives at the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in N.J.A.C. 19:47-18.4(c) shall be completed.

19:47-18.6 Wagers

(a) All wagers at let it ride poker shall be made by placing gaming chips or plaques and, if applicable, a match play coupon on the appropriate betting areas of the table layout. A verbal wager accompanied by cash shall not be accepted.

(b) Only players who are seated at a let it ride poker table may wager at the game. Once a player has placed his or her wagers and received cards, that player must remain seated until the completion of the round of play.

(c) All wagers shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedures in N.J.A.C. 19:47-18.7, 18.8 or 18.9. Except as provided in (d) below, no wager shall be made, increased, or withdrawn after the dealer has announced "No more bets."

(d) At the beginning of each round of play, each player shall be required to place three equal but separate wagers. The wagers shall be identified as bet number one, bet number two and bet number three. Bet number one and bet number two may subsequently be removed by the player in accordance with the provisions of N.J.A.C. 19:47-18.10.

(e) A casino licensee may, in its discretion, permit a player to place wagers at two betting positions during a round of play provided that the two betting positions are adjacent to each other.

19:47-18.7 Procedures for dealing the cards from a manual dealing shoe

(a) If a casino licensee chooses to have the cards dealt from a manual dealing shoe, the dealing shoe shall meet the requirements of N.J.A.C. 19:46-1.19 and shall be located on the table in a location as approved by the Commission. Once the procedures required by N.J.A.C. 19:47-18.5 have been completed, the stacked deck of cards shall be placed in the dealing shoe either by the dealer or by an automated card shuffling device.

(b) The dealer shall announce "No more bets" prior to dealing any cards. Each card shall be removed from the dealing shoe with the hand of the dealer that is closest to the dealing shoe and placed on the appropriate area of the layout with the opposite hand.

(c) The dealer shall, starting with the player farthest to his or her left and continuing around the table in a clockwise manner, deal the cards as follows:

1. One card face down to each player who has placed three wagers in accordance with N.J.A.C. 19:47-18.6;

2. One card face down to the area designated for the placement of the community cards;

3. A second card face down to each player who has placed three wagers in accordance with N.J.A.C. 19:47-18.6;

4. A second card face down to the area designated for the placement of the community cards, which card shall be placed on top of the first card dealt to this area;

5. A third card face down to each player who has placed three wagers in accordance with N.J.A.C. 19:47-18.6; and

6. A third card face down to the area designated for the placement of the community cards, which card shall be placed on top of the first two cards dealt to this area.

(d) After three cards have been dealt to each player and the area designated for the placement of the community cards, the dealer shall remove the stub from the manual dealing shoe and, except as provided in (e) below, place the stub in the discard rack without exposing the cards.

(e) The dealer shall be required to count the stub at least once every five rounds of play in order to determine that the correct number of cards are still present in the deck. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

1. If the count of the stub indicates that 52 cards are in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

2. If the count of the stub indicates that the number of cards in the deck is incorrect, the dealer shall determine if the cards were misdealt. If the cards have been misdealt (a player or the area designated for the placement of the community cards has more or less than three cards) but 52 cards remain in the deck, all hands shall be void pursuant to N.J.A.C. 19:47-18.12. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18.

(f) Notwithstanding the provisions of (e) above, the counting of the stub shall not be required if an automated card shuffling device is used that counts the number of cards in the deck after the completion of each shuffle and indicates whether 52 cards are still present. If the automated card shuffling device reveals that an incorrect number of cards are present, the deck shall be removed from the table in accordance with the provisions of N.J.A.C. 19:46-1.18.

19:47-18.8 Procedures for dealing the cards from the hand

(a) Notwithstanding any other provisions of N.J.A.C. 19:46 or this chapter, a casino licensee may, in its discretion, permit a dealer to deal the cards used to play let it ride poker from his or her hand.

(b) If a casino licensee chooses to have the cards dealt from the dealer's hand, the following requirements shall be observed.

1. The casino licensee shall use an automated shuffling device to shuffle the cards.

2. Once the procedures required by N.J.A.C. 19:47-18.5 have been completed, the dealer shall place the stacked deck of cards in either hand.

i. Once the dealer has chosen the hand in which he or she will hold the cards, the dealer shall use that hand whenever holding the cards during that round of play.

ii. The cards held by the dealer shall at all times be kept in front of the dealer and over the table inventory container.

3. The dealer shall then announce "No more bets" prior to dealing any cards. The dealer shall deal each card by holding the deck of cards in the chosen hand and using the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout.

(c) The dealer shall, starting with the player farthest to his or her left and continuing around the table in a clockwise manner, deal the cards as follows:

1. One card face down to each player who has placed three wagers in accordance with N.J.A.C. 19:47-18.6;

2. One card face down to the area designated for the placement of the community cards;

3. A second card face down to each player who has placed three wagers in accordance with N.J.A.C. 19:47-18.6;

4. A second card face down to the area designated for the placement of the community cards, which card shall be placed on top of the first card dealt to this area;

5. A third card face down to each player who has placed three wagers in accordance with N.J.A.C. 19:47-18.6; and

6. A third card face down to the area designated for the placement of the community cards, which card shall be placed on top of the first two cards dealt to this area.

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(d) After three cards have been dealt to each player and the area designated for the placement of the community cards, the dealer shall, except as provided in (e) below, place the stub in the discard rack without exposing the cards.

(e) The dealer shall be required to count the stub at least once every five rounds of play in order to determine that the correct number of cards are still present in the deck. The dealer shall count the stub in accordance with the provisions of N.J.A.C. 19:47-18.7(e) and (f).

19:47-18.9 Procedures for dealing the cards from an automated dealing shoe

(a) Notwithstanding any other provision of N.J.A.C. 19:46 or this chapter, a casino licensee may, in its discretion, choose to have the cards used to play let it ride poker dealt from an automated dealing shoe which dispenses cards in stacks of three cards, provided that the shoe, its location and the procedures for its use are approved by the Commission.

(b) If a casino licensee chooses to have the cards dealt from an automated dealing shoe, the following requirements shall be observed.

1. Once the procedures required by N.J.A.C. 19:47-18.5 have been completed, the cards shall be placed in the automated dealing shoe.

2. The dealer shall then announce "No more bets" prior to the shoe dispensing any stacks of cards.

(c) The dealer shall deliver the first stack of cards dispensed by the automated dealing shoe face down to the player farthest to his or her left who has placed three wagers in accordance with N.J.A.C. 19:47-8.6. As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall, moving clockwise around the table, deliver a stack face down to each of the other players who has placed three wagers in accordance with N.J.A.C. 19:47-8.6. The dealer shall then deliver a stack of three cards face down to the area designated for the placement of the community cards.

(d) After each stack of three cards has been dispensed and delivered in accordance with this section, the dealer shall remove the stub from the automated dealing shoe and, except as provided in (e) below, place the cards in the discard rack without exposing the cards.

(e) The dealer shall be required to count the stub at least once every five rounds of play in order to determine that the correct number of cards are still present in the deck. The dealer shall count the stub in accordance with the provisions of N.J.A.C. 19:47-18.7(e) and (f).

19:47-18.10 Procedures for completion of each round of play

(a) After the dealing procedures required by N.J.A.C. 19:47-18.7, 18.8 or 18.9 have been completed, each player shall examine his or her cards.

1. Each player who wagers at let it ride poker shall be responsible for his or her own hand and no person other than the dealer may touch the cards of that player.

2. Each player shall be required to keep his or her three cards in full view of the dealer at all times.

3. After each player has made a decision regarding bet number two pursuant to (e) below each player's cards shall be placed face down on the appropriate area of the layout, the player shall not touch the cards again.

(b) After each player has examined his or her cards, the dealer shall, beginning with the player farthest to the dealer's left and moving clockwise around the table, ask each player if he or she wishes to withdraw bet number one or let it ride.

1. If a player chooses to let bet number one ride, that bet shall remain on the appropriate betting area of the layout until the end of the round of play.

2. If a player chooses to withdraw bet number one, the dealer shall move the gaming chips on the betting area designated for bet number one toward the player who shall then immediately remove the gaming chips from the betting area.

ALTERNATIVE A

(c) After each player has made a decision regarding bet number one, the dealer shall burn the top card in the stack of three cards dealt to the area designated for the placement of the community cards. The burned card shall be placed in the discard rack face down.

ALTERNATIVE B

(c) After each player has made a decision regarding bet number one, the dealer shall:

1. Burn the top card, if the cards are dealt in accordance with N.J.A.C. 19:47-18.7 or 18.8, in the stack of three cards dealt to the area designated for the placement of community cards. The burned card shall be placed in the discard rack face down; or

2. Burn the bottom card, if the cards are dealt in accordance with N.J.A.C. 19:47-18.9, in the stack of three cards dealt to the area designated for the placement of the community cards. The burned card shall be placed in the discard rack face down.

(d) The dealer shall then turn the top card of the two cards remaining in the community card area face up and place it on top of the remaining card. The exposed card shall become the first community card.

(e) After the first community card is exposed, the dealer shall, beginning with the player farthest to the dealer's left and moving clockwise around the table, ask each player if he or she wishes to withdraw bet number two or let it ride. This decision shall be made by each player regardless of the decision made concerning bet number one.

1. If a player chooses to let bet number two ride, that bet shall remain on the appropriate betting area of the layout until the end of the round of play.

2. If a player chooses to withdraw bet number two, the dealer shall move the gaming chips on the betting area designated for bet number two toward the player who shall then immediately remove the gaming chips from the betting area.

(f) The dealer shall then move the first community card to the right of the card that remains face down in the community card area. The face down card shall be turned face up by the dealer and become the second community card.

(g) After the second community card is turned face up, the dealer shall, beginning with the player farthest to his or her right and continuing around the table in a counterclockwise direction, turn the three cards of each player face up.

1. The two community cards and the three cards dealt to each player shall form the five card poker hand of each player.

2. The dealer shall examine the cards of each player to determine if the player's hand qualifies for a payout pursuant to N.J.A.C. 19:47-18.11.

(h) Any wager on a hand which has a rank that is lower than a pair of tens shall be a losing wager. All losing wagers shall be immediately collected by the dealer and placed in the table inventory container. The three cards of any player that has made a losing wager shall be collected and placed in the discard rack.

(i) After all losing wagers have been collected, all winning wagers shall be paid. All winning hands shall remain face up on the layout until all winning wagers have been paid by the dealer. Each winning wager that remains on the table shall be paid in accordance with the payout odds listed in N.J.A.C. 19:47-18.11 or as otherwise approved by the Commission.

1. The dealer shall pay all winning wagers beginning with the player farthest to the right of the dealer and continuing counterclockwise around the table.

2. After paying all winning wagers, the dealer shall immediately collect the cards of all winning players and the community cards and place them in the discard rack.

(j) All cards collected by the dealer shall be picked up in order and placed in the discard rack in such a way that they can be readily arranged to reconstruct each hand in the event of a question or dispute.

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19:47-18.11 Payout odds

(a) The payout odds for winning wagers at let it ride poker printed on any layout or in any brochure or other publication distributed by a casino licensee shall be stated through the use of the word "to" or "win," and no odds shall be stated through the use of the word "for."

(b) Subject to the payout limitation in (c) below, a casino licensee shall pay off each winning wager at the game of let it ride poker at no less than the following odds:

Wager	Payout Odds
Royal Flush	1,000 to 1
Straight Flush	200 to 1
Four-of-a-kind	50 to 1
Full House	11 to 1
Flush	8 to 1
Straight	5 to 1
Three-of-a-kind	3 to 1
Two Pair	2 to 1
Pair of Tens, Jacks, Queens, Kings or Aces	1 to 1

(c) Notwithstanding the minimum payout odds required in (b) above, a casino licensee may establish a maximum amount of $50,000 or such greater amount as approved by the Commission that is payable to a player on a single hand.

19:47-18.12 Irregularities

(a) A card that is found face up in the shoe or the deck while the cards are being dealt shall not be used in the game and shall be placed in the discard rack. If more than one card is found face up in the shoe or the deck during the dealing of the cards, all hands shall be void and the cards shall be reshuffled.

(b) A card drawn in error without its face being exposed shall be used as though it was the next card from the shoe or the deck.

(c) If any player or the area designated for the placement of the community cards is dealt an incorrect number of cards, all hands shall be void and the cards shall be reshuffled.

(d) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle, or fails to complete a shuffle cycle, the cards shall be reshuffled in accordance with procedures approved by the Commission.

(e) If an automated dealing shoe is being used and the device jams, stops dealing cards, or fails to deal all cards during a round of play, the round of play shall be void and the cards shall be removed from the device and reshuffled with any cards already dealt, in accordance with procedures approved by the Commission.

(f) Any automated card shuffling device or automated dealing shoe shall be removed from a gaming table before any other method of shuffling or dealing may be utilized at that table.

(a)

CASINO CONTROL COMMISSION
Accounting and Internal Controls
Complimentary Services or Items

Proposed Amendments: N.J.A.C. 19:45-1.9, 1.9B and 1.46

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

Authorized: N.J.S.A. 5:12-63(c), 69, 70(j), (l) and (m), 99 and 102(m).

Proposal Number: PRN 1995-346.

Submit written comments by July 5, 1995 to:
E. Dennis Kell
Assistant General Counsel
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Effective January 25, 1995, N.J.S.A. 5:12-102m was amended to eliminate the requirement that complimentary distribution programs be approved by the Casino Control Commission (Commission) prior to their implementation. These proposed amendments would conform the Commission's rules to that statutory amendment, requiring instead that a casino licensee prepare detailed procedures controlling such programs prior to their implementation and maintain them in its casino accounting department.

The amendments would also eliminate the requirement that certain complimentary programs for invited guests, slot and table game incentive programs and direct mass marketing programs be preapproved by the Commission. Like complimentary distribution programs, they could be implemented once a casino licensee has prepared detailed procedures controlling them. N.J.A.C. 19:45-1.9(f)1, (g)1 and (h)1.

The amendments would also increase the value of complimentary services and items which implicate specific reporting and other regulatory requirements.

The threshold at which a casino licensee must report the names of the persons authorizing and receiving noncash complimentary services or items would increase from $100.00 to $150.00. In addition, the amendments would eliminate the requirement that these names be reported for complimentary cash gifts of $100.00 or less. N.J.A.C. 19:45-1.9(e)1 and 2.

The threshold at which a casino licensee must utilize a specified form of agreement or purchase order to purchase a complimentary gift from a vendor would increase from $1,000 to $2,000. N.J.A.C. 19:45-1.9B(j). The threshold at which a casino licensee must record its reasons for issuing complimentary services or items would increase from $2,000 over any five day period to $10,000 over the same period. N.J.A.C. 19:45-1.9B(e) and (f).

The value of cash gifts a casino licensee may issue to a patron over a 12 month period pursuant to complimentary programs for invited guests, before applying any excess amount to the annual limits on cash complimentary gifts, would increase from $100,000 to $250,000. Gifts of $250.00 or less would not be included in calculating the 12 month total. N.J.A.C. 19:45-1.9(g).

The amendments would also reduce the minimum number of participants in a direct mass marketing complimentary program from 500 to 250, while increasing from $100.00 to "less than $200.00" the value of complimentary services or items which may be offered per person, per day, pursuant to such a program. N.J.A.C. 19:45-1.9(h). The amendments would also eliminate, for cash complimentaries of $100.00 or less, the requirement that, if a casino licensee has possession of the names and addresses of the persons to whom they are offered, it shall maintain that data. N.J.A.C. 19:45-1.9(h)3v.

N.J.A.C. 19:45-1.9(b) would be amended to eliminate the provision that internal controls governing the authorization and issuance of complimentary services and items are subject to 15 day approval. These internal controls would now be subject to approval in 30 days, consistent with the recent amendment to N.J.S.A. 5:12-99.

The definition of "complimentary distribution program" would be amended in N.J.A.C. 19:45-1.46(a) to permit gaming activity to be a criterion for participation as long as the level of gaming activity is not considered.

Finally, N.J.A.C. 19:45-1.9B(b)2 is amended to clarify that the employee who verifies the receipt of certain complimentary gifts need not be the same person who authorized their issuance and to permit the recipient to acknowledge receipt of the gift in writing or be identified through a signature comparison.

Social Impact

The proposed amendments will, in some instances, eliminate recording and reporting requirements imposed upon casino licensees with respect to the issuance of complimentary services and items. They will also eliminate the requirement that casino licensees obtain prior approval of complimentary distribution programs and certain other complimentary programs. The amendments are not expected to cause casino licensees to alter their policies for issuing complimentary services or items, or to have any other measurable social impact.

Economic Impact

The proposed amendments will eliminate some of the recording and reporting requirements currently imposed on casino licensees with respect to the issuance of complimentary services of items. They will also eliminate the requirement that casino licensees obtain prior approval for complimentary distribution programs and certain other complimentary programs. These changes may be expected to result in some cost savings to casino licensees; however, it would be highly speculative to estimate the amount of any such savings at this time.

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Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this proposal are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed amendments will affect only casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.9 Complimentary services or items

(a) (No change.)

(b) No casino licensee may offer or provide any complimentary services, gifts, cash or other items of value to any person except as authorized by N.J.S.A. 5:12-102(m). Each casino licensee shall, pursuant to the provisions of N.J.S.A. 5:12-99a(2) and N.J.A.C. 19:45-1.3, prepare and maintain internal controls for the authorization and issuance of complimentary services and items, including cash and noncash gifts issued pursuant to N.J.S.A. 5:12-102(m) and N.J.A.C. 19:45-1.9B. Such internal controls shall include, without limitation, the procedures by which the casino licensee delegates to its employees the authority to approve the issuance of complimentary services and items and the procedures by which conditions or limits, if any, which may apply to such authority are established and modified, including limits based on relationships between the authorizer and recipient, and shall further include effective provisions for audit purposes. [Notwithstanding the provisions of N.J.A.C. 19:45-1.3, a casino licensee shall submit the internal controls, or any changes thereto, required by this section to the Commission and Division at least 15 days prior to their implementation. Such internal controls shall be deemed approved by the Commission 15 days after submission unless the casino licensee is notified in writing to the contrary.] Notwithstanding the foregoing:

1.-3. (No change.)

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

(e) Each casino licensee shall record, on a daily basis, the name of each person provided with complimentary services or items, the category of service or item provided, the value (as calculated in accordance with (c) above) of the services or items provided to such person, and the person authorizing the issuance of such services or items. A copy of this record shall be submitted to the Division's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving:

1. Each noncash complimentary service or item which has a value (as calculated in accordance with (c) above) of [$100.00] **$150.00** or less; [and]

2. Each complimentary cash gift of $100.00 or less; and

[2.]**3.** Any complimentary service or item, including a cash or noncash gift, which is issued pursuant to:

i.-iv. (No change.)

(f) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a table game or slot machine complimentary incentive program shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if:

1. The program is [submitted to and approved by the Commission] **prepared prior to implementation and maintained** in accordance with the requirements of N.J.A.C. 19:45-1.46 as if the program were a complimentary distribution program;

2.-4. (No change.)

(g) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a complimentary program for invited guests shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if:

1. The program is [submitted to and approved by the Commission] **prepared prior to implementation and maintained** in accordance with the requirements of N.J.A.C. 19:45-1.46 as if the program were a complimentary distribution program;

2.-3. (No change.)

4. The recipient of any cash complimentary issued as part of the program will not have received more than [$100,000] **$250,000 in gifts of more than $250.00** in cash complimentaries from complimentary programs for invited guests conducted by the casino licensee, including the current program, during the previous 12 month period; provided, however, that such limitation shall not preclude a recipient from receiving more than [$100,000] **$250,000** in cash complimentaries through participation in complimentary programs for invited guests conducted by that casino licensee during the previous 12 month period if any cash complimentaries issued in excess of [$100,000] **$250,000** are otherwise authorized by N.J.A.C. 19:45-1.9B(g) and are recorded in accordance with the requirements of that section; and

5. (No change.)

(h) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a direct mass marketing complimentary program shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if:

1. The program is [submitted to and approved by the Commission] **prepared prior to implementation and maintained** in accordance with the requirements of N.J.A.C. 19:45-1.46 as if the program were a complimentary distribution program[;]. [provided, however, that detailed procedures controlling a direct mass marketing complimentary program which is subject to the provisions of N.J.A.C. 19:45-1.46(b) and which includes complimentary cash, slot tokens or simulcast wagering shall not have to be submitted to the Commission 15 days prior to the implementation of the program, but may instead be prepared prior to implementation of the program and maintained as an accounting record by the casino licensee if:

i. The casino licensee has previously submitted and the Commission has previously approved generic internal control procedures governing direct mass marketing complimentary programs; and

ii. No material element of the direct mass marketing complimentary program varies from the generic internal control procedures previously approved by the Commission;]

2. The complimentary services or items offered pursuant to the program [do not exceed $100.00] **are less than $200.00** per person per day and are offered to at least [500] **250** persons within 30 days from the implementation of the program;

3. A record, which shall be available to the Division upon request, is maintained identifying:

i.-iv. (No change.)

v. If the casino licensee has possession of the data, the names and addresses of the persons to whom **more than $100.00 in** cash complimentaries were offered, which data shall be maintained in accordance with the requirements of N.J.A.C. 19:45-1.8(c)5.

(i) (No change.)

19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) (No change.)

(b) Except as otherwise provided in N.J.A.C. 19:45-1.9(e), all complimentary cash and noncash gifts provided by a casino licensee shall be recorded in accordance with the provisions of N.J.A.C. 19:45-1.9(e). If a complimentary cash or noncash gift has a value of $500.00 or more, the casino licensee shall also:

1. (No change.)

2. Verify the identity of the recipient by an examination of identification credentials which contain a photograph or physical description of the recipient, **through a signature comparison to the patron's credit file,** or by a personal attestation by [the authorizer of the gift] **an authorized employee**, which may include an attestation made

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after a telephone call to the recipient of the gift, **or the receipt of a document signed by the recipient acknowledging the receipt of the gift**; and

3. (No change.)

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

(e) If a casino licensee provides complimentary cash and noncash gifts worth [$2,000] **$10,000** or more to a person or his or her guests within any five day period, the casino licensee shall record the reason why such gifts were provided and maintain such records available for inspection by the Commission or Division upon request. Such reasons may include, without limitation, the participation of the person in a complimentary program for invited guests conducted pursuant to N.J.A.C. 19:45-1.9(g) or information concerning the person's player rating, which rating shall be based upon the actual amount and frequency of play by the person as recorded in the casino licensee's player rating system.

(f) Each casino licensee shall submit to the Division a report listing each person who has received [$2,000] **$10,000** or more in complimentary cash and noncash gifts within any five day period ending during the preceding month. Such report shall be filed by the last business day of the following month and shall include the total amount of complimentary cash or noncash gifts provided to each person.

(g) (No change.)

(h) Notwithstanding the provisions of (g) above, complimentary cash gifts which are provided to persons pursuant to complimentary incentive programs regulated by N.J.A.C. 19:45-1.9(f), complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g), direct mass marketing complimentary distribution programs regulated by N.J.A.C. 19:45-1.9(h) or complimentary distribution programs regulated by N.J.A.C. 19:45-1.46 shall be governed by any limitations contained in those respective rules and shall not be subject to the annual limits specified in (g) above. Additionally, match play coupons **and complimentary cash gifts of $100.00 or less** shall not be subject to the annual limitations specified in (g) above.

(i) (No change.)

(j) If a noncash gift to be purchased from a vendor by a casino licensee for the direct or indirect benefit of a patron has a purchase price of [$1,000] **$2,000** or more, the purchase shall be authorized by a written agreement or purchase order, a copy of which shall be maintained by the casino licensee in its files for inspection upon request, and shall include a provision in substantially the following form:

"Pursuant to the requirements of New Jersey law, the seller agrees not to effect any transaction with (name of the patron), directly or indirectly, involving the item(s) purchased pursuant to this purchase agreement after delivery without the express written approval of (the casino licensee). If the seller violates this condition of purchase, the seller agrees that this purchase agreement shall be null and void, and the seller further agrees to return this full purchase price of the item(s) purchased pursuant to this purchase agreement to (the casino licensee) as liquidated damages."

(k)-(l) (No change.)

19:45-1.46 Procedures for control of coupon redemption and other complimentary distribution programs

(a) For the purposes of this chapter, a complimentary distribution program is a contest or promotion pursuant to which complimentary services or items are provided directly or indirectly by a casino licensee to the public without regard to the identity **or level of** gaming activity of the individual recipients. The procedures contained in (c) through (n) below shall apply to casino licensees offering coupon redemption complimentary distribution programs which entitle patrons to use match play coupons or to redeem coupons for complimentary cash, gaming chips, slot tokens or simulcast wagers issued in connection with bus and other complimentary distribution programs. No match play coupons, complimentary cash, gaming chips or slot tokens may be distributed, or complimentary simulcast wagers accepted, by a casino licensee under any coupon redemption complimentary distribution program that does not comply with the requirements of this section.

(b) Detailed procedures controlling all complimentary distribution programs entitling patrons to complimentary cash or slot tokens not regulated by (a) above shall be [submitted by the casino licensee to the Commission and Division at least 15 days prior to implementing the program. The procedures for all such programs shall be deemed acceptable by the Commission unless the casino licensee is notified in writing to the contrary. Detailed procedures controlling all complimentary distribution programs entitling patrons to complimentary items or services other than cash or slot tokens or simulcast wagers shall be] prepared prior to implementation of the programs and shall be maintained [as an accounting record by the casino licensee] **by the casino accounting department**. Complimentary items or services, including cash, slot tokens or simulcast wagers, distributed through programs regulated by this subsection shall be reported in accordance with the procedures contained in (m) and (o) below.

(c)-(p) (No change.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Baccarat and Minibaccarat Tables; Physical Characteristics

Baccarat-Punto Banco; Minibaccarat; Vigorish

Proposed Amendments: N.J.A.C. 19:46-1.12, 19:47-3.3 and 7.3

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

Authority: N.J.S.A. 5:12-69(a), 70(f) and 100(e).

Proposal Number: PRN 1995-347.

Submit written comments by July 5, 1995 to:
Barbara A. Mattie
Manager—Operations
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

N.J.A.C. 19:46-1.12(a) currently limits the number of betting areas on a Baccarat-Punto Banco table to 14. The proposed amendment to this subsection would increase the permissible number of betting areas on a Baccarat-Punto Banco table to 16. In addition, the proposed amendments to N.J.A.C. 19:46-1.12(a) and (b) incorporate the current layout requirements for Baccarat-Punto Banco and Baccarat-Chemin de Fer tables in the text of the rule so that the reference to the diagram on file with the Commission may be deleted. Finally, the proposed amendments to N.J.A.C. 19:46-1.12(c) reorganize the description of the physical requirements for a minibaccarat table so that all table layout requirements are included within one paragraph.

It should also be noted that N.J.A.C. 19:47-3.3 and 7.3 are being amended to include current vigorish marking procedures in the appropriate sections of the rules that govern the conduct of the games. In the case of Baccarat-Punto Banco, this provision is being codified at N.J.A.C. 19:47-3.3 for the first time. With regard to minibaccarat, this provision is being recodified from N.J.A.C. 19:46-1.12(c)4 to 19:47-7.3(c).

Social Impact

The proposed amendments are not anticipated to have any significant social impact. The amendments to N.J.A.C. 19:46-1.12(a) would allow a casino licensee the option to utilize a Baccarat-Punto Banco layout with more betting areas, which may increase interest and participation among patrons. The remainder of the proposed amendments are organizational or technical in nature and should not have any social impact.

Economic Impact

Casino licensees which elect to offer Baccarat-Punto Banco tables with 16 betting areas may experience an increase in revenue. If the additional betting positions result in more patrons playing the game, an increase in casino revenue and corresponding table win should theoretically occur, although any estimate of the real impact of the proposed rule change would be highly speculative. In addition, a casino licensee may benefit from the more efficient use of limited casino space by using a baccarat layout with 16 betting areas.

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No economic impact in part is anticipated from the other organizational or technical amendments.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this proposal are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

The proposed amendments will only affect the operations of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:46-1.12 Baccarat and minibaccarat tables; physical characteristics

(a) Baccarat-Punto Banco shall be played on a table having [numbered places] **betting positions** for [10 to 14] **a maximum of 16** seated players. **Each table shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer and a discard bucket in locations as approved by the Commission.** The cloth covering the table shall have imprinted thereon [the], **at a minimum, the following:**

1. The name or trade name of the casino licensee; [and shall be marked in a manner similar to that depicted in the following diagram:

Editor's note: A diagram for an acceptable baccarat table was adopted with these rules but it is not reproduced herein. Information on this diagram may be obtained from the Casino Control Commission, Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, NJ 08401.]

2. A betting position for each player who may be seated at the table, with each betting position being identified with a separate number;

3. Separate areas designated at each player betting position for the placement of a wager on the "Banker's Hand," the "Player's Hand" and a "Tie Hand;"

4. Separate areas designated for the placement of the cards for the "Banker's Hand" and the "Player's Hand;"

5. The inscription "Tie Bets pay 8 to 1"; and

6. If the casino licensee elects to defer the payment of vigorish pursuant to N.J.A.C. 19:47-3.3, spaces for the purpose of marking vigorish, which spaces shall be numbered to correspond to the numbers of the player betting positions.

(b) Baccarat-Chemin de Fer shall be played on a table having [numbered places] **betting positions for** [9 to] **a maximum of** 14 seated players. **Each table shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer and a discard bucket in locations as approved by the Commission. The cloth covering the table shall [also have the] be approved by the Commission and shall have imprinted thereon, at a minimum, the following:**

1. The name or trade name of the casino licensee [imprinted thereon.];

2. A betting position for each player who may be seated at the table, with each betting position being identified with a separate number;

3. A designated area for the placement of the wager of each player, which area shall permit the identification of the player betting position from which the wager was placed;

4. A designated area for the placement of the banker's wager; and

5. Separate areas designated for the placement of the cards for the "Banker's Hand" and the "Player's Hand."

(c) Minibaccarat shall be played at a table having **betting positions for a maximum of nine seated players** on one side [places for the participants], and on the opposite side a place for the dealer. **Each minibaccarat table shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission.**

1. The cloth covering the minibaccarat table shall have imprinted thereon [the], **at a minimum, the following:**

i. The name or trade name of the casino licensee[.];

[2. The minibaccarat layout shall have specific]

ii. A betting position for each player who may be seated at the table, with each betting position being identified with a separate number;

iii. Separate areas designated **at each player betting position** for the placement of **a** wager[s] on the "Banker's Hand," **the** "Players Hand" and **a** "Tie Hand[.];" [Each table may have a maximum of nine areas for the players at the table with each area being numbered.

3. The following inscriptions shall appear on the cloth covering of the minibaccarat table:

[i.]**iv. The inscription** "Tie Bets pay 8 to 1;"

[ii.]**v.** Numbered areas that correspond to the [seat numbers] **numbers of the player betting positions** for the purpose of marking vigorish unless the casino licensee only charges vigorish in accordance with the provisions of N.J.A.C. 19:47-7.3(d), in which case the numbered areas are not required; and

[iii.]**vi.** [An area] **Separate areas** designated for the placement of **the** cards for the "Player's **Hand**" and **the** "Banker's **Hand**" [hands].

[4. If marker buttons are used for the purpose of marking vigorish, these marker buttons shall be placed in the table inventory float container or in a separate rack designed for the purpose of storing marker buttons and such rack shall be placed in front of the table inventory float container during gaming activity.

5. Each minibaccarat table shall have a drop box and a tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission.]

[6.]**2.** The dimensions of a minibaccarat table, at its longest and widest points, shall comply with the following specifications:

i. A minibaccarat table with six or seven **player** betting [areas] **positions** shall be at least 79 inches long and 44 inches wide; or

ii. A minibaccarat table with eight or nine **player** betting [areas] **positions** shall be at least 90¾ inches long and 68 inches wide.

19:47-3.3 Payout odds; vigorish

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

(c) A winning wager made on the "Banker's Hand" shall be paid off by a casino licensee at odds of 1 to 1, except that the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to, in the casino licensee's discretion, either four or five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the amount of a five percent vigorish to 25 cents or the next highest multiple of 25 cents, and the amount of a four percent vigorish to 20 cents or the next highest multiple of 20 cents.

1. A casino licensee may collect the vigorish from a player at the time the winning payout is made or may defer it to a later time; provided, however, that all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe.

2. The amount of any vigorish not collected at the time of the winning payout shall be evidenced by the placing of a coin or marker button containing the amount of the vigorish owed in a [rectangular] space in front of the dealer on the layout imprinted with the number of the player owing such vigorish.

3. If marker buttons are used for the purpose of marking vigorish, these marker buttons shall be placed in the table inventory float container or in a separate rack designed for the purpose of storing marker buttons and such rack shall be placed in front of the table inventory float container during gaming activity.

(d) (No change.)

19:47-7.3 Payout odds; vigorish

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

(c) A winning wager made on the "Banker's Hand" shall be paid off by a casino licensee at odds of 1 to 1. Except as otherwise provided in (d) below, the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to, in the casino licensee's discretion, either four or five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the vigorish to five cents or the next highest multiple of five cents.

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1. A casino licensee may collect the vigorish from a player at the time the winning payout is made or may defer it to a later time; provided, however, that all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe.

2. The amount of any vigorish not collected at the time of the winning payouts shall be evidenced by the placing of a coin or marker button containing the amount of the vigorish owed in a [rectangular] space in front of the dealer on the layout imprinted with the number of the player owing such vigorish.

3. If marker buttons are used for the purpose of marking vigorish, these marker buttons shall be placed in the table inventory float container or in a separate rack designed for the purpose of storing marker buttons and such rack shall be placed in front of the table inventory float container during gaming activity.

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

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack; Irregularities
Proposed Amendment: N.J.A.C. 19:47-2.15

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69(a) and 100.
Proposal Number: PRN 1995-348.

Submit written comments by July 5, 1995 to:
Barbara A. Mattie, Manager
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Currently, N.J.A.C. 19:47-2.15(j) requires that all hands in a game of blackjack be called dead if the dealer inserts his or her hole card into a card reader device when the dealer's face up card is not an ace, king, queen, jack or 10. The proposed amendment to this section would permit a casino licensee to allow play to continue under such circumstances provided that the particular card reader device in use does not provide any player at the table with the opportunity to determine the value of the hole card. If the particular card reader device in use does provide any player with the opportunity to know the value of the hole card when it is inserted in violation of N.J.A.C. 19:47-2.6(j), then the casino licensee must continue to call all hands dead.

Social Impact

The proposed amendment is not anticipated to have a significant social impact. Potentially, blackjack players who were previously disgruntled when a hole card was inserted in violation of the rule and all hands were called dead will view the proposed amendment positively since, depending upon the type of card reader device in use, it may no longer be mandatory to call all hands dead.

Economic Impact

The proposed amendment is not anticipated to have a significant economic impact. The Commission believes it is very rare for a hole card to be inserted in violation of the rule. However, when such a violation does occur and a player has a potential blackjack, the current regulation requires in all cases that all hands be called dead and that the players' wagers be returned. The proposed amendment may permit players, depending upon the type of card reader device in use, to obtain payoffs for winning wagers. Conversely, a player who previously benefited from the current regulation by having a "poor" blackjack hand called dead may now potentially lose his or her wager when such a violation occurs at a table using a card reader device that does not provide any player with the opportunity to determine the value of the hole card.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this proposal are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Regulatory Flexibility Statement

This proposed amendment would affect casino licensees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility statement is required.

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

19:47-2.15 Irregularities

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

(j) If the dealer [accidentally] inserts his or her hole card into a card reader device [and] **when** the value of his or her first card is not an ace, king, queen, jack or 10, [all hands shall be called dead, the cards collected, and each player's wager returned] **the dealer, after notification to a casino supervisor, shall:**

1. If the particular card reader device in use provides any player with the opportunity to determine the value of the hole card, call all hands dead, collect the cards and return each player's wager; or

2. If the particular card reader device in use does not provide any player with the opportunity to determine the value of the hole card, continue play.

(k)-(m) (No change.)

(b)

SOUTH JERSEY TRANSPORTATION AUTHORITY

Rules of Operation
Proposed Amendments: N.J.A.C. 19:75

Authorized By: South Jersey Transportation Authority, James A. Crawford, Executive Director.
Authority: N.J.S.A. 27:25A-7(q), 27:25A-22(a) and (c).
Proposal Number: PRN 1995-338.

Public hearings concerning the proposal will be held on:
Wednesday, June 21, 1995 at **10:00 A.M.**
Administrative Building
South Jersey Transportation Authority
Farley Service Plaza
P.O. Box 351
Hammonton, New Jersey 08037
Friday, June 23, 1995 at **10:00 A.M.**
Atlantic City Office
South Jersey Transportation Authority
25 S. New York Avenue
Atlantic City, New Jersey 08401

Please call Kristi M. Howell, Administrative Practice Officer at (609) 965-6060 if you wish to be included on the list of speakers.

Submit written comments by July 5, 1995, to:
Stephen K. Foran, Esq.
Gilmore & Monahan
Counsellors at Law
Allen Street Professional Center
Ten Allen Street
P.O. Box 1540
Toms River, NJ 08754

The agency proposal follows:

Summary

This proposal contains minor revisions and housekeeping revisions intended to clarify various issues which have arisen since the February 7, 1994 effective date of the bus management program rules. In addition, this proposal contains major revisions to the bus parking lot approval process contained in subchapter 6. The definitions in subchapter 1 have been amended as necessitated by the proposal. Specifically, definitions of bus safety inspection, casino, computerized/electronic manifest program, and medallion have been added and the definition of bus assignment deleted. Casino is

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defined as in the Casino Control Act (N.J.S.A. 5:12-1 et seq.) The other additions are discussed below within the context of the particular subchapter. A summary of the revisions follows:

Subchapter 2 has been amended to update the long list of specific bus travel routes to and from various major Atlantic City attractions. In addition, the Authority has expanded the destinations for which routes are available and has made routes to major tourist destinations available upon request. Lastly, a provision has been added which allows the Authority to temporarily modify routes to account for short term conditions, such as construction.

The bus intercept procedures of subchapter 3 have been amended to eliminate intercept if the casino has on premises intercept capabilities. Casinos without intercept capabilities are required to use Authority intercept services. Such services will be provided at the expense of the casino. Additionally, N.J.A.C. 19:75-3.2 has been clarified to provide that casinos which require Authority intercept must follow the listed procedures. The waiver/exemption process previously available at subsection (d) has been eliminated.

N.J.A.C. 19:75-4.1 has been amended to provide upon request a list of approved passenger discharge sites.

N.J.A.C. 19:75-5.4 has been added to provide for bus safety inspections in cooperation with the New Jersey Department of Transportation (DOT). The Authority may direct buses to an authorized facility for such inspections.

The bus parking lot approval process of subchapter 6 has been substantially amended. Lots currently unapproved, or conditionally approved, must submit plans which conform to the new rules by December 1, 1995. The lots will be given until December 1, 1996 to implement the submitted plans and, thereby, operate in full conformance with these rules. Significant additions have been made to the list of criteria each bus parking lot applicant must satisfy. These additions include a set aside area for bus safety inspections, provision of on-site driver amenities, conformance with the Noise Control Act (N.J.S.A. 13:1G), structure setback of 100 feet from any residential use property line, 25 foot front yard, rear yard, and side yard setbacks from non-residential uses, 25 foot buffers, circulation aisle width of 18 feet for one-way flow and 25 feet for two-way flow, minimum lot depth of 100 feet and conformance with local ordinances. These additions are based upon the experience of the Authority and a consultant's report and recommendations. Lastly, an attempt is made to tie-in the number of approved parking spaces to the actual need for such spaces.

The bus management fees of N.J.A.C. 19:75-7.1 have been amended to allow for the purchase of a discounted annual or daily medallion that permits unlimited bus entry. The medallion must be visibly displayed on the front bus windshield. Additionally, N.J.A.C. 19:75-7.4 has been amended to require casino activity centers to participate in the Authority's computerized/electronic manifest program. Non-casino activity centers may continue to use a manual manifest.

The violations and penalties provisions of suchapter 8 have been revised by the addition of N.J.A.C. 19:75-8.5 to advise violators that it may be possible to avoid a personal court appearance by utilizing an affidavit.

Lastly, N.J.A.C. 19:75-11.1 has been revised to require bus maintenance facilities to submit an implementation schedule.

Social Impact

The overall social impact of the amendments to the rules is to better enable the Authority to achieve the goals of the rules, namely, to reduce traffic tie-ups, free residential areas of bus traffic and bus parking lots, reduce air and noise pollution, and generally provide safe and efficient bus services. The enhanced achievement of these goals will have a further positive impact on the residents of Atlantic City.

Casino operators should react favorably to the new provision allowing for on premises bus intercept. Bus operators should also be pleased with the availability of discounted annual or daily medallions. In addition, in an effort to facilitate safety and efficiency, bus drivers will be provided various amenities including food services, lounge areas and communication services. Rule violators may be afforded the opportunity to avoid personal court appearances. The Authority believes it will be able to affect these changes without any negative impact upon the aforementioned overall goals which remain prominent in the eyes of the Authority.

The only negative reaction to the proposed amendments may come from bus parking lot operators. The Authority believes the amended rules are absolutely necessary to achieve uniformity and fairness in the operation of bus parking lots and to further the noteworthy overall goals of the Authority. The added parking lot criteria result from the experiences of the Authority and a consultant study. While plans must be submitted by December 1, 1995, the bus parking lot operators are provided with a whole year to implement the plan. Thus, the Authority, while striving to achieve its goals, has made an attempt to provide bus parking lot operators a fair opportunity to achieve compliance.

Economic Impact

The proposed amendments will have a positive economic impact on the owners and operators of buses who chose to take advantage of the proposed discounted annual or daily medallions. Similarly, casinos with on premises intercept capabilities will save the costs previously incurred from compliance with the bus intercept provisions. Casinos without such capabilities will now be expressly responsible for the costs incurred by the Authority in providing intercept services. However, it is anticipated that such costs will still represent a savings over current expenditures. Lastly, rule violators may be able to save whatever costs may be incurred from a personal court appearance.

Obviously, the greatest potential economic impact of these amendments lies upon the owners and operators of bus parking lots. The impact of the new approval criteria will vary, dependent upon the current conditions of each bus parking lot. However, all owners will incur some costs in the preparation and submittal of applications and plans to the Authority. Additionally, dependent upon the current conditions of the particular parking lot some capital costs may be incurred. The economic impact is, however, spread out over a lengthy period which ends with the compliance date of December 1, 1996.

It must also be emphasized that the Authority is presently planning the phase-out of its Missouri Avenue and Huron Avenue bus parking lots. Both lots should be closed on or before December of 1995. These close-outs should result in greater economic opportunity for remaining bus parking lots.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements reflected in this proposal are dictated by statutes which established the South Jersey Transportation Authority, N.J.S.A. 27:25A-1 et seq., and are not subject to any Federal requirement or standard.

Regulatory Flexibility Analysis

The proposed amendments do not impose any new reporting or recordkeeping requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, a clarified compliance requirement is imposed upon all bus parking lots. Such lots were previously required to file with the Authority an application for approval. However, all previously unapproved or conditionally approved lots, including John King, South Jersey Gas, Hansen's and Ruffu, are required to apply for approval in accordance with these amendments. The current amendments add additional requirements which the parking lot applicant must satisfy in order to obtain approval. The impact of the new criteria will be different for each particular lot. Professional planning and/or legal services may be necessary to assist a lot owner in preparation of the application and also to afford guidance throughout the approval process. Dependent upon the current physical status of the lot, capital costs may be incurred to obtain compliance with the proposed rules and revenue losses incurred due to the loss of parking spaces. In order to comply with the new on-site driver amenities requirement both the John King lot and South Jersey Gas lot will need capital improvements. It is estimated that both the John King lot and the South Jersey Gas lot could be improved at a cost of $36,000 and the loss of one parking space. Lastly, provision of an area for safety inspections is estimated to result in the loss of two revenue-producing bus parking spaces. Since the average bus parking fee is $16.00, the potential maximum annual lost revenue is estimated at $11,680 per lot. However, lots will only be affected if operated at full capacity. Thus, lots such as Hansen's, Ruffu and John King which operate at a 60 percent level should only be minimally affected.

The Authority has minimized the impact of any compliance costs by providing more than a one year period for compliance. Additionally, the rules still contain a procedure for an applicant to obtain a variance from any rule provision. Most importantly, the closure by the Authority of its Missouri and Huron Avenue lots will result in increased revenue for all remaining lots. Even with the projected loss of parking spaces for improvements, it is estimated that the annual revenue increase for the South Jersey Gas lot will be $105,000 and, therefore, its one time capital cost of $36,000 is immediately offset. The annual revenue increase for the John King lot is estimated at $18,000 and, therefore, its one time capital cost of $36,000 is recouped in a two year period. The annual revenue increase for Hansen's is estimated at $239,000 and Ruffu's is $76,000. Thus, while the existing lots will incur some compliance costs, the overall financial impact of the rules is positive.

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

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SUBCHAPTER 1. GENERAL PROVISIONS

19:75-1.1 Definitions

The following terms shall have the following meanings, unless the context clearly indicates otherwise.

. . .

["Bus assignment" means a comprehensive plan for bus parking to provide for the orderly management of bus traffic throughout Atlantic County, and designed to minimize the impact of bus traffic on residential neighborhoods, improve air quality and have a positive impact on the traffic flow within the City of Atlantic City.]

"Bus safety inspection" means an inspection for safety in accordance with New Jersey Department of Transportation (NJDOT) regulations.

"Casino" means a single room in which casino gaming is conducted pursuant to the provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.)

"Casino intercept" means the procedure of either holding or staging buses at Authority approved locations/facilities for the purpose of regulating the flow of bus traffic to activity centers.

. . .

"Computerized/electronic manifest program" means an automated type of manifest maintained by the Authority.

. . .

["Intercept" means the procedure of either holding or staging buses at Authority approved locations/facilities for the purpose of regulating the flow of bus traffic to activity center.]

"Medallion" means an annual or daily permit for unlimited bus entry into a municipality within the district in which casino gaming is authorized.

. . .

19:75-2.3 Routes of travel to and from Casino hotels, Atlantic City Convention Hall or Center, **major tourist destinations,** Atlantic City International Airport, Atlantic City Rail Terminal, **Authority approved bus parking lots,** and other major traffic generators

(a) Routes to and from [Bally's] **The** Grand:

1. Arrival: Via the Atlantic City Expressway to Exit 2 onto Albany Avenue (Route 40E) via Albany Avenue to Pacific Avenue, left to Providence Avenue, left and right into [Bally's] **The** Grand Transportation Center.

2. (No change).

(b)-(g) (No change.)

(h) Routes to and from Showboat:

1. Arrival: Via Route 30/Absecon Boulevard to [North Carolina] **Delaware** Avenue right [to] **on** Atlantic Avenue, left on [Atlantic] **Maryland** Avenue, [right on Maryland Avenue] left on Pacific Avenue, right into Showboat Transportation Center.

2. (No change.)

(i) (No change.)

(j) Routes to and from Trump Castle:

1. (No change.)

2. Departure: Via Huron Avenue, exit right to Route 30/Absecon Boulevard, or exit right to Brigantine Boulevard, left to Route 30/Absecon Boulevard to approved bus parking[, following approved routes as indicated in this Chapter].

(k) (No change).

(l) Routes to and from Taj Mahal:

1. Arrival: Via Route 30/Absecon Boulevard, right on [Pennsylvania Avenue] **Delaware Avenue on right to Atlantic Avenue to left on Pennsylvania Avenue** into tunnel and exit tunnel onto Maryland Avenue, right into Taj Mahal Transportation Center.

2. Departure: Via Maryland Avenue **right on Atlantic Avenue, to left on Delaware Avenue** to Route 30/Absecon Boulevard or Atlantic Avenue, right or left to approved bus parking.

3. (No change.)

(m) Routes to and from Atlantic City Convention Hall:

1. Arrival: Via the Atlantic City Expressway left into Missouri Avenue Intercept Lot, right out of lot (Baltic Avenue) to Missouri Avenue, left to [Pacific] **Atlantic** Avenue, right to Mississippi Avenue, left into tunnel staying right to loading area.

2. (No change.)

(n) (No change.)

(o) Routes to and from Atlantic City Rail Terminal/New Convention Center:

1. (No change.)

2. Harrah's Marina/Trump Castle:

i. Arrival: Exit Trump Castle to Brigantine Boulevard, right on Brigantine Boulevard proceed under the Brigantine Bridge to Harrah's exit to load/unload area. Exit Harrah's Marina to Brigantine Boulevard to Huron Avenue, right on Huron Avenue to Dr. Martin Luther King, Jr., Boulevard, bear left onto Dr. Martin Luther King, Jr., Boulevard to [Atlantic] **Baltic** Avenue, right on [Atlantic] **Baltic** Avenue to Michigan Avenue, right on Michigan Avenue to Kirkman Boulevard, left at Kirkman Boulevard, to Rail Terminal.

ii. (No change.)

3A.-4. (No change.)

5. Tropworld/[Bally's] **The** Grand:

i. (No change.)

ii. Departure: Kirkman Boulevard to Michigan Avenue, right on Michigan Avenue to Atlantic Avenue, right on Atlantic Avenue to Brighton Avenue, left on Brighton Avenue, TropWorld Transportation Center or left on Providence Avenue to [Bally's] **The** Grand Transportation Center.

(p) Routes to and from Bus Parking Facilities:

1. Routes to and from South Jersey Gas Lot:

i. Arrival: Atlantic Avenue to Arkansas Avenue, right on Arctic Avenue to entrance of facility.

ii. Departure: Exit via Arctic Avenue, right on Ohio Avenue, through, right, or left on Atlantic Avenue, exit via Atlantic Avenue, right turn only with restrictions.

2. Routes to and from Hansens's Bus World:

i. Arrival: Atlantic Avenue to Albany Avenue (Route 40) west to entrance of facility.

ii. Departure: Right on Albany Avenue (Route 40) west to entrance of Atlantic City Expressway or right on Albany Avenue (Route 40) west to first u-turn then east on Albany (Route 40) to Atlantic Avenue, left on Atlantic Avenue to destination.

3. Routes to and from Ruffu Ford:

i. Arrival: Atlantic Avenue to Albany (Route 40) west to entrance of facility.

ii. Departure: Right on Albany Avenue (Route 40) west to entrance of Atlantic City Expressway or right on Albany Avenue (Route 40) west to first u-turn then east on Albany Avenue (Route 40) to Atlantic Avenue, left on Atlantic Avenue to destination.

4. Routes to and from John King:

i. Arrival: Via Atlantic City Expressway-Missouri Avenue, to left on Atlantic Avenue, right on Tennessee Avenue to parking facility.

ii. Departure: Exit lot via St. James Place, right on Pacific Avenue, left on South Carolina Avenue to Atlantic Avenue.

iii. Alternate Route; Departure: Exit lot via St. James Place, right on Pacific Avenue, left on Tennessee Avenue to Atlantic Avenue.

(q) Routes of travel to and from most major tourist destinations, may be obtained by bus owners or operators upon request from the Authority.

(r) The Authority may alter the above routes on a temporary basis due to construction.

SUBCHAPTER 3. **CASINO** BUS INTERCEPT

19:75-3.1 Conditions requiring intercept

(a) Buses traveling to Authority approved **casino** activity centers are [subject to intercept] **not subject to intercept if the casino has intercept capabilities on its premises.**

(b) If the casino does not have in place an Authority approved bus program, intercept is not required.

(c) Casinos that do not have on premises intercept capability shall intercept at an Authority approved facility.

(d) If on street loading/unloading is required, intercept services

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shall be obtained from the Authority for the periods of operation required by the Casino.

(e) Authority intercept assistance shall be provided at the casino's expense and the casino shall reimburse the Authority for all costs incurred for its intercept assistance upon receipt of a monthly or quarterly invoice.

19:75-3.2 [Intercept procedure; location approval; waiver] **Authority assisted intercept procedures**

(a) Casinos subject to Authority intercept shall follow the procedures in (b) through (e) below.

[(a)]**(b)** Buses subject to intercept at Authority approved locations and so notified by the **casino** activity center and/or the Authority, shall proceed to the approved intercept facility designated by the **casino** activity center and/or the Authority, and shall be dispatched as and when on-site capacity permits, or as otherwise directed by the Authority or its designee.

[(b)]**(c)** Any **casino** activity center authorized to intercept and dispatch must submit an intercept and dispatch plan to the Authority for review and approval prior to authorization. In evaluating plans submitted for Authority approval, the Authority shall consider site capacity, peak hour bus volumes, over-all impact on traffic, safety, staffing levels, corridor location and the various functions performed at the intercept facility.

[(c) Any activity center that does not require the physical interception of buses at an Authority operated facility shall request an exemption/waiver from the Authority in writing. If such a request is made, an intercept plan shall be submitted for Authority review and approval prior to utilization. In evaluating the intercept plan and determining whether to issue an exemption/waiver, the Authority shall consider site capacity, peak hour bus volumes, over-all impact on traffic safety, staffing levels, corridor location and the various functions performed at the intercept facility.]

(d) Upon 30 days written notice from the Authority, all **casino** activity centers providing gratuities, incentives or premiums to bus passengers shall submit a plan to the Authority for review and approval setting forth the procedure to be utilized by the **casino** activity center at the intercept facility to carry out these activities, to ensure that the activities do not adversely affect traffic flow at either the intercept facility or the **casino** activity center.

SUBCHAPTER 4. DISCHARGE AND LOADING OF PASSENGERS

19:75-4.1 Discharge and loading: generally

(a) All buses shall discharge and load passengers on sites designated by the Authority.

(b) A list of approved discharge sites is available from the Authority upon request.

SUBCHAPTER 5. BUS OPERATIONS

19:75-5.1 Procedure following discharge of passengers

Upon discharge of all passengers, buses shall forthwith proceed to an authorized bus parking facility in accordance with [the Authority's bus assignment program and] all traffic regulations, unless otherwise exempted in accordance with N.J.A.C. 19:75-6.2(d). Buses shall not be operated solely for the convenience of the driver between discharge and loading of passengers. Buses picking up passengers shall not arrive more than 15 minutes prior to scheduled departure.

19:75-5.4 [(Reserved)] **Bus safety inspection**

The Authority, in cooperation with the Department of Transportation (DOT), may direct buses, after passengers are unloaded, to an authorized facility for a bus safety inspection.

SUBCHAPTER 6. PARKING

19:95-6.1 Approved parking lots

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

(c) Bus parking lots, including Authority lots, which currently are unapproved or conditionally approved must submit by December 1, 1995 an application with plans that evidence an intention to comply with these rules.

(d) Bus parking lots which submit applications as provided in (c) above shall operate in full compliance with these rules by December 1, 1996. Failure to comply by this date shall result in recission of conditional approval to operate a bus parking lot.

(e) The Authority shall not accept an application for bus parking lot approval unless the bus parking demand during the peak parking month exceeds 90 percent of the existing number of Authority approved bus parking spaces. The peak parking month and existing number of approved parking spaces shall be as determined by the Authority.

19:75-6.2 Bus parking lot approvals

(a) [All bus parking lots shall submit an application for approval to operate to the Authority,] **The Authority bus parking lot approval required by these rules shall be** in addition to any and all other required municipal, county, state or Federal approvals. [This application shall be submitted by March 24, 1994. Failure to do so shall result in recession of approval to operate a bus parking facility.] Authority approval shall be granted only if the [proposed lot:] **applicant bus parking lot satisfies each of the criteria as follows**:

1. Has filed an impact statement acceptable to the Authority. [which includes, but is not limited to the following factors: air quality, need, traffic circulation and neighborhood impact analysis.]

2. through 9. (No change.)

10. Demonstrates that it complements the Authority's bus management program, and does not adversely affect any portion of the program as contained in this chapter[.]**;**

11. Is on an Authority approved bus route;

12. Possesses a set aside area for bus safety inspections as required by the New Jersey Department of Transportation (NJDOT);

13. Provides on-site driver services including food services, rest rooms, security, lounge areas, television rooms, recreational areas and communication services;

14. Is in conformance with the Noise Control Act (N.J.S.A. 13:1G) and the rules of the Department of Environmental Protection promulgated pursuant thereto and the standards contained in the Atlantic City Land Use Development Ordinance (Chapter 163-73H);

15. A building or structure setback of 100 feet from any residential use property line;

16. A 25-foot front yard, rear yard, and side yard setback from uses other than residential;

17. A 25-foot buffer along the site boundary in accordance with a submitted landscaping plan;

18. A minimum circulation aisle width of 18 feet for one-way flow and 25 feet for two-way flow, with signs and striping as required by the Manual on Uniform Traffic Control Devices (MUTCD) standards;

19. A minimum lot depth of 100 feet; and

20. Is in conformance with municipal land use ordinances.

(b) through (h) (No change.)

19:75-7.1 Mandatory payment of fees; proof of payment

(a) The owner/operators of any bus subject to the provisions of this chapter shall:

1. and 2. (No change.)

(3) In lieu of the bus management fee required by (a)1 above, the Authority offers a daily or annual bus management fee for each bus in the form of a medallion which may be purchased from the Authority. The annual medallion fee is $30,000 for a bus company fleet and $500.00 for an individual bus. The daily medallion fee is $4.00 per bus.

4. A daily or annual Medallion as issued by the Authority shall be visibly displayed on the front windshield of the bus.

(b) (No change.)

19:75-7.4 Activity center manifests

(a) The Authority shall require each **casino** activity center to maintain a daily bus activity manifest, and participate in the Authority's computerized/electronic manifest program.

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(b) All non-casino activity centers shall maintain a written manifest or may, at their option, participate in the Authority's computerized/electronic manifest program.

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

19:75-8.5 Affidavits

An affidavit issued pursuant to Court Rule 7:6-6 may be available in lieu of a violator's personal court appearance. Each violator may pursue such an affidavit directly with the municipal court having jurisdiction of the violation.

19:75-11.1 Bus maintenance facility approval

(a) Any and all existing and proposed bus maintenance facilities not exempted under N.J.A.C. 19:75-6.2(d) shall submit an application to the Authority to participate in the Authority's bus management and maintenance program, in addition to any and all other required municipal, county, state or federal approvals. All applicants for a maintenance facility must meet the following criteria:

1. The facility must file an impact statement acceptable to the Authority, [which includes air quality, emissions control, traffic circulation, neighborhood impact analysis] and **which** [compliance] **complies** with OSHA standards for safety and disposal of chemical, petrochemical, acids, adequate ventilation and related standards as dictated.

2.-9. (No change.)

10. The facility shall submit to the Authority a detailed site plan, operating plan, **implementation schedule,** and safety plan which addresses the criteria set forth in this section.

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES LOCAL FINANCE BOARD

Tax Collection Administration

Proposed Readoption with Amendments: N.J.A.C. 5:33

Authorized By: Local Finance Board, Beth Gates, Chair and Director, Division of Local Government Services.

Authority: N.J.S.A. 52:27BB-10, 52:27BB-32, 52:27D-18, 54:4-6.10, 54:4-122.9, 17:16F-15 and 40A:12.6.

Proposal Number: PRN 1995-341.

Submit comments by July 5, 1995 to:
Doris Windle, Executive Secretary
Local Finance Board
Division of Local Government Services
Department of Community Affairs
CN 803
Trenton, N.J. 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5:33 will expire on August 6, 1995.

N.J.A.C. 5:33 contains the rules of the Local Finance Board and the Director of the Division of Local Government Services relating to aspects of tax collection practice and responsibilities of tax collectors in administering various statutes.

The authority for the Board and Director to regulate these activities are found in P.L. 1947, c.151, as amended, specifically, N.J.S.A. 52:27BB-10, 52:27BB-32 and 52:27D-18. These sections require the Local Finance Board to promulgate reasonable rules and regulations, forms and practices for the interpretation and administration of State laws included within the jurisdiction of the Division of Local Government Services in the Department of Community Affairs. Other sections include N.J.S.A. 54:6-10 which address the Tenants Property Tax Rebate Law, and N.J.S.A. 17:16F-15 which address aspects of the mortgage escrow accounting industry.

The rules are intended to ensure Statewide consistency in the administration of the various practices, ensure taxpayers are treated fairly, and provide for interpretation of aspects of statutes. The Director and the Board have reviewed these rules and have determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

Subchapter 1 addresses a variety of different issues related to tax collection practices. N.J.A.C. 5:33-1.1 is proposed to be repealed in its entirety, as the rule merely repeats the statute on which it is based (N.J.S.A. 54:4-122.8). The Board believes it is not necessary to repeat the law in the rules.

N.J.A.C. 5:33-1.2 addresses procedures to be followed when a municipality determines to engage a bank to process its tax collection receipts. Commonly referred to as a "lock box," N.J.S.A. 54:4-122.9 requires the Director to adopt rules to provide for procedures to notify the public of the use of a lock box for tax or utility collections, ensure there are sufficient internal controls, and provide for adequate reporting.

As these procedures are rarely utilized, amendments have been proposed at subsection (a) to clarify the use of the practice, require the municipal auditor to review and approve the contract for compliance with accounting and internal control procedures, and for the municipality to file the contract with the Director. The Director will only have to take action to reject an application; the filing will be deemed approved if not acted upon within 30 days of its receipt. The proposed amendments will eliminate the formal approval requirement and enhance financial integrity of the practice.

N.J.A.C. 5:33-1.3 and 1.4 set forth use of forms for tax collection records and municipal liens. A minor amendment at N.J.A.C. 5:33-1.3 clarifies the use of replicas of the collection record to be produced using electronic data processing procedures.

N.J.A.C. 5:33-1.5 sets forth definitions generally used in subchapter 1. N.J.A.C. 5:33-1.6 through 1.8 address procedures utilized by tax collectors and tax servicing organizations that make payments on behalf of taxpayers through mortgage escrow accounts. The use of receipts and replacements bills when original tax bills are not available are described. Finally, the requirement that the Director make available a listing of each tax collection office, along with pertinent information is continued.

Subchapter 2 addresses matters related to the certification of tax collectors pursuant to N.J.S.A. 40A:9-145 et seq. While several minor technical amendments are proposed, the content remains unchanged. Three courses and specific course content continue to be required to sit for certification as a tax collector (N.J.A.C. 5:33-2.1). N.J.A.C. 5:33-2.2 details the procedure followed when an applicant for the certification examination fails the test and desires to review the test with Division staff, and is proposed to be readopted without change.

Rules related to administration of the Tenants' Property Tax Rebate Act (N.J.S.A. 54:4-6.2 et seq.) are proposed to be readopted without change in subchapter 3 for the time being. Some changes are anticipated as soon as the end of 1995, as litigation pending in the State Superior Court, or amendments being contemplated by the Legislature, will result in clarifications or changes to the rules. The current subchapter includes rules concerning subchapter definitions; tax collector responsibilities; notice of tax reduction; owner responsibilities; rebate calculation and payments; penalty provisions; special circumstances—property tax reductions; rebates for tenants who receive rent subsidies; enforcement by local agency; and consistency with municipal ordinances.

Subchapter 4 implements various provisions of P.L. 1990, c.69, which addresses the relationship between tax collection practices and the residential mortgage escrow/tax servicing industry. These rules are proposed for readoption without change, but may also be subject to amendment by the end of the year due to pending changes in the Federal Real Estate Settlement Procedures Act and their associated Federal rules in 12 CFR 27. The current subchapter includes rules concerning subchapter definitions; forms for mortgage escrow account transactions; use of initial tax authorization notice; escrow account transactions; notice regarding the sale of municipal liens; request for duplicate tax bills; duplicate tax bill fees; appeals for reimbursement of fee charged; freezing of duplicated fee charges; requests to deliver a mortgagor's tax bill to a property tax processing organization; and effort of the Federal Real Estate Settlement Practices Act (RESPA).

Social Impact

Readoption of the rules in subchapters 1 and 2 helps ensure the continued fiscal integrity of local governmental units. Affected by the rules are the 567 municipalities. Failure to readopt these rules would result in a reduction of fiscal integrity of municipal governments throughout the State.

As these procedures have been in place for many years, the readoption will cause little or no impact on the regulated community or the public. The

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agencies have worked with them and understand their purposes. Little, if any comment, either positive or negative is anticipated, as there is little impact on the parties.

The Tenant Property Tax Rebate program rules amplify the basic premise of the legislation; that tenants in the State are entitled to receive a share of the tax reform initiatives initially enacted in 1991. The provisions for formal posting of rebates due each different rental amount are meant to ensure that tenants are notified of what is due them and that owners provide the credits or rebates that are due. The rules also meet the legislative intent that tenants who are the source of the property taxes originally paid, and are entitled to the rebate. While landlord organizations have challenged various sections of the rule, appropriate changes will be made once the pending litigation and legislative issues have been resolved.

Readoption of the mortgage escrow account transaction program rules continue the standardization and faster administration of escrow accounts as it pertains to municipal tax collection offices, taking into account the wide variety of tax office operations. Clarity provided by the procedures in the rules will help the mortgagee and the mortgagor, as well as the tax collector. Of particular importance to the homeowner (mortgagor) of delinquent property taxes, all three will be kept better informed through standardized documentation.

Economic Impact

Ultimately, the public pays the cost of the rules in subchapters 1 and 2 through fees and taxes charged by the public agencies. Because the rules have been in effect for many years, these costs are part of the basic operating practices of the agencies.

With regard to the Tenant's Property Tax Rebate rules, the economic impact of the readoption includes the cost to local governments of complying with the preparation and mailing of the notices, and the costs to owners of processing rebates/credits. While these costs vary from municipality to municipality, the costs are already part of municipal budgets and landlord cost structures. On the whole, the economic and social benefits of returning property tax reductions to the renters that paid them outweighs the costs to process notices and rebates.

Readopting of the mortgage escrow account transaction rules will continue the standardization and administration of escrow accounts as it pertains to municipal tax collection offices, taking into account the wide variety of tax office operations. Clarity provided by the rules help the mortgagee and the mortgagor, as well as the tax collector.

There is no statistical data that relates to these rules and their readoption, nor is there an impact on funding sources. However, as they are a part of the regulatory schema of the State's oversight of local units, their cost is determined to be necessary for protection of the public interest.

Because there are no fees being established or continued, nor new procedural or technical requirements being imposed, there will be no economic changes as a result of the readoption of these rules.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the statutory basis of the rules contained herein are dictated by various State statutes which are not subject to any Federal requirements or standards.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for subchapters 1 and 2, because they do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules concern municipalities and individuals seeking to become Certified Tax Collectors, respectively.

With regard to the Tenants Property Tax Rebate program, it must be noted that rental of residential property is a business. Many rental properties in New Jersey are non-owner occupied, one, two and three family units. For them the cost of compliance is small and easy to meet. The larger the building or structure, the larger and more complex the business, the greater the cost of compliance, though that cost is spread among many rental units. For this program, the cost of compliance is directly related to the size of the enterprise.

The Director continues to determine that a common rule for all sizes of rental businesses is appropriate, as the smaller the business, the lower cost of compliance. For local governments, alternatives to the promulgated design of the notice is allowed and content standards are described in the rule. The statute provides no exemption for small businesses.

Most of the institutions affected by the mortgage escrow account transaction program are small businesses.When originally enacted, rules increased administrative costs for new forms and duplicate bill request and change appeal procedures. The readoption continues the costs already in place, and creates no additional administrative procedures for small businesses. Given that small businesses are most of those regulated, no lesser requirements are provided based on business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:33.

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

5:33-1.1 [Tax bill receipting machine] **(Reserved)**

[In any municpality, the governing body may require the collector to use a tax bill receipting machine so constructed as to imprint duplicate figures on a continuous record locked within the machine, simultaneously as bills are receipted. Such machine shall be subject to approval as to design, type and function by the State Board. Access to the recording section of the machine shall be restricted to the clerk, who, not less than once each week, shall remove the recorded figures and compare them with the collector's bank deposits during the same period. Whenever such comparison reveals any default, delinquency or official misconduct, the clerk shall immediately report the results thereof to the local governing body and to the collector's surety. Not less than once each month, the clerk shall certify to the local governing body that he has complied with the requirements of this section during the next preceding 30 days.]

5:33-1.2 Bank collection of tax payments

(a) Any municipality adopting a resolution to contract for services in connection with N.J.S.A. 54:4-122.9 shall, prior to [awarding the contract, receive approval of the Director of the Division of Local Government Services of the contract] **adoption, obtain written advice from the municipal auditor who shall review the proposed contract for compliance with law, any relevant rules, and proper internal control procedures. Within three days of adoption of such a resolution, the Municipal Clerk shall submit a certified copy of the resolution and report of the auditor to the Director of the Division of Local Government Services. Unless action is otherwise taken by the Director within 30 days of receipt, the resolution shall be deemed approved**. Such contract shall include detailed procedures to be used in implementing procedures to receive and deposit funds, forwarding of back-up materials to the collector, holding of funds, audit trails and all other information required for evaluation of the proposed system.

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

5:33-1.3 Form of tax collection record

Tax collectors shall use a standard form for posting preliminary and final taxes. **The content of the form may be reproduced through the use of electronic data processing systems**. Sample copies can be obtained from:

Division of Local Government Services
Department of Community Affairs
CN 803
Trenton, N.J. 08625

5:33-2.1 Course of instruction-Certified Tax Collector

(a) In addition to other requirements defined by [statute] **N.J.S.A 40A:9-145 et seq.**, successful completion of the three courses described in (b) through (d) below and as administered through **the Center for Government Services at** Rutgers, the State University [Bureau of Government Research,] shall be required of candidates for Municipal Tax Collector certification [(see N.J.S.A. 40A-9-145)].

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

(e) A Certificate of Completion of each course is subject to the following requirements:

1. (No change.)

2. Passage of the final examination. The passing grades for the final examination shall be in accordance with the standards in effect and as prescribed by Rutgers, the State University, and shall be graded by the course instructors under the supervision of the [Bureau of Government Research] **Center for Government Services**.

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(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural and Substantive Rules

Proposed Amendments: N.J.A.C. 5:91 and N.J.A.C. 5:93

Authorized By: New Jersey Council on Affordable Housing, Shirley M. Bishop, P.P., Executive Director.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1995-336.

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

Wednesday, June 21, 1995
1:30 P.M. to 4:30 P.M.
William Ashby Building
Department of Community Affairs
101 South Broad Street
Conference Room 134
Trenton, New Jersey 08625

Submit written comments by July 5, 1995 to:

Shirley M. Bishop, Executive Director
NJ Council on Affordable Housing
CN 813
Trenton, New Jersey 08625-0813

The agency proposal follows:

Summary

The New Jersey Council on Affordable Housing was created by the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. The Fair Housing Act at N.J.S.A. 52:27D-307 requires that the Council adopt criteria and guidelines for the municipal determination of its present and prospective fair share of affordable housing need. To that end the Council recently enacted N.J.A.C. 5:93, effective June 6, 1994, its substantive rules. Also, the Council has adopted procedural rules at N.J.A.C. 5:91, effective December 7, 1992. The following proposed rules, which amend N.J.A.C. 5:91 and N.J.A.C. 5:93, generally constitute "housekeeping" amendments in which spelling errors, inaccurate or outdated citations, misnomers and other inaccuracies are corrected. For example, all references to N.J.A.C. 5:92 currently found in N.J.A.C. 5:91 are altered to refer to the Council's new substantive rules at N.J.A.C. 5:93; prior references to the New Jersey Department of Environmental Protection and Energy (DEPE) have been changed to the Department of Environmental Protection (DEP); and where references previously were generally made to the effective date of a particular regulation, the date itself is now substituted (For example, the effective date of N.J.A.C. 5:93 is June 6, 1994 and that date is now included where appropriate.) Numerous other small changes are made in the rules to clarify the Council's intent and to eliminate ambiguity. There are also a few substantive changes that are proposed to be made to the Council's rules.

The proposed changes to N.J.A.C. 5:91-1.1 include the following significant amendments.

In N.J.A.C. 5:91-1.2, the definition of "submission" is proposed to be amended by the insertion of the words "an adopted" before housing element and fair share plan.

N.J.A.C. 5:91-2.2 is proposed to be amended by the insertion of the words "without a petition" to make clear that a municipal housing element and fair share plan will be accepted for filing without a petition under the listed circumstances.

The word "amend" is deleted from the notice requirement of N.J.A.C. 5:91-3.3(c). A new "Notice of Amendment to Substantive Certification" form is proposed at N.J.A.C. 5:91-13.4.

N.J.A.C. 5:91-5.2 and 6.2 are proposed to be amended to allow the Council after an initial review of a municipal petition for substantive certification to request the municipal submission of additional information within 60 days as an alternative to the current procedure of issuing a compliance report to the municipality for a 14 day comment period which would then be followed by a refiling or an amendment of the municipal housing element within 120 days. The alternative 60 day procedure is proposed to streamline and shorten the Council's processes when a municipal petition merely needs to be supplemented by additional information.

A proposed amendment at N.J.A.C. 5:91-7.2(d) increases the time frame for mediation before the Council or its designated mediator from 60 to 90 days. In the experience of the Council, on the prior fair share cycle, mediation has often taken more than 60 days. Therefore, 90 days is a more realistic figure and still is cognizant of a timely inclusion.

Proposed amendments to N.J.A.C. 5:91-7.3 alter the procedures concerning the mediation report prepared by the mediator at the end of mediation. Previously the report would first be presented to the Council and then served on the parties to mediation. In the proposed new provision at subsection (d), the mediator will prepare the mediation report and serve the parties to mediation first. Then, after a 14 day comment period, the mediation report will be presented with the comments to the Council. N.J.A.C. 5:91-7.4(a) makes clear that if a municipality must publish notice of an amendment of its housing element and fair share plan as a result of mediation that it should not do so until the mediation report has been presented to the Council. Proposed amendments to N.J.A.C. 5:91-7.6(d) provide the same procedure for a re-opened mediation.

A proposed amendment at N.J.A.C. 5:91-11.6(a) makes clear that the Council should receive a copy of the annual report that must currently be filed with the agency by the receiving municipality of a regional contribution agreement with regard to the implementation of the project plan financed by the RCA funds.

The proposed amendment at N.J.A.C. 5:91-13.4(a) provides a new form to be used by municipalities required to give public notice of their intent to amend substantive certification.

Proposed amendments to the New Jersey Council on Affordable Housing's substantive rules include the following proposed changes.

N.J.A.C. 5:93-1.3, the definition section of the substantive rules, includes the following proposed new definitions: "gut rehabilitation," "non-conforming use," "substantial compliance" and "utility allowance." The term "gut rehabilitation" gives two alternative means whereby a unit of housing can be considered to be "gut rehabilitated." The term is proposed as a replacement for the term "substantial" rehabilitation, which has been used in the definition of "inclusionary development." The definition of "inclusionary development" is being amended to eliminate the term "substantial" rehabilitation and insert the term "gut" rehabilitation.

The proposed definition of "non-conforming use" is the same as the definition of that term which appears in the Municipal Land Use Law.

The definition of "reduction" is being amended to include "bonus rental credits." When the rule was originally proposed, "bonus rental credits" was inadvertently omitted. That omission is now corrected by the proposed amendment. This correction is necessary because reduction means a deduction of precredited need based on a fair share plan which should include bonus rental credits.

The proposed definition "substantial compliance" is included to clarify the provisions of N.J.A.C. 5:93-3.6, Reductions of substantial compliance, and makes clear that units for which building permits have been issued will be considered as having been "actually created" by the Council for purposes of this rule. The proposed definition of "utility allowance" provides that those utilities that are to be included in the utility allowance must be stated in the lease of a rental unit. The definition is important with regard to N.J.A.C. 5:93-7.4(f) which guides municipalities in establishing affordable rents for units in which utilities are provided. Finally, the definition of "prior cycle credits" is proposed to be amended to make clear that rehabilitated units created between April 1, 1980 and December 15, 1986 are not eligible for prior cycle credits. This is because these units will otherwise be calculated in the Council's methodology.

At N.J.A.C. 5:93-2.12 a typographical error has been corrected in the example following paragraph (b)6, where what should have been a division sign (÷) currently appears as a plus (+) sign. The typographical error was obvious from the printed text of the paragraph.

A proposed amendment to N.J.A.C. 5:93-2.14(a) makes clear that the one-for-one reduction of the cumulative 1987 to 1999 need for affordable housing activities undertaken from 1987 to 1993 must be for activities undertaken "as a part of a COAH certified or a court settlement" fair share plan. A further amendment at subsection (a) makes clear that the reduction includes rental bonus credits, while an amendment at 2.15 makes clear that a similar credit is available for eligible units constructed between April 1, 1980 and December 15, 1986.

Amendments throughout subchapter 3 are also proposed to clarify that rental bonus credits are also to be included in various crediting reduction provisions of subchapter 3. At N.J.A.C. 5:93-3.1(b) a proposed amendment makes clear the time period for which prior cycle credits will be granted. At N.J.A.C. 5:93-3.5, a new subsection (b) has been proposed to give municipalities and developers greater flexibility in zoning previously certified sites that remain undeveloped. The Council will now entertain a municipal

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proposal for an alternative overlay zoning density and set aside on a previously certified site, as the result of a developer agreement. The Council will certify both the current and the alternative zoning and calculate the higher yield in addressing the fair share obligation. If the alternative zoning is exercised and there is unmet need resulting in the municipal plan, the unmet units will be addressed in the Council's third fair share cycle. The Council will not require a municipality to zone additional sites unless there are compelling reasons to meet these potentially unmet units.

The definition of "substantial compliance" has been defined to include not only newly constructed units, but also those units that have been issued building permits. In N.J.A.C. 5:93-3.6, the building permit language has been added to the appropriate subsections (see 3.6(a) and (b)).

N.J.A.C. 5:93-5.1(a) proposes the elimination of the purchase of Elder Cottage (ECHO) housing from the list of acceptable techniques whereby a municipality may address its affordable housing obligation and adds to that list the purchase of housing units "that have been occupied."

At N.J.A.C. 5:93-5.2(b) and 6.4(a), a reference to the BOCA "National Existing Code" is eliminated and the "Property Maintenance Code" is added. This is the correct term for the reference work that is being cited.

N.J.A.C. 5:93-5.5(a)2 eliminates the requirement for an administrative mechanism to monitor construction while paragraph (a)4 adds a requirement that the municipality indicate "the entity responsible" for monitoring the construction and overall development activity of municipally sponsored construction and gut rehabilitation.

Provisions of N.J.A.C. 5:93-5.8 have been amended at subsection (a) to make clear that alternative living arrangements may be used to address a municipal housing obligation; that alternative living arrangements reserved for senior citizens must be included within the 25 percent cap reserved for senior citizens (proposed new subsection (c)); that controls on affordability for alternative living arrangements shall remain in effect for at least 10 years; and that to be eligible for rental bonus credits controls on affordability must remain in effect for at least 30 years (proposed new subsection (d)).

N.J.A.C. 5:93-5.9 has been amended to add a new subsection (e) to require assessment of a municipality's accessory apartment program at the end of a two year period from the date of substantive certification to see if the program is working. If the municipal accessory apartment program is not producing the required units, the proposed provision allows the Council to require changes to the municipal fair share plan to address any predicted shortfall.

Proposed new rule N.J.A.C. 5:93-5.11, Write-down/buy-down of previously owned units, permits a municipality to address up to 10 units of its affordable housing obligation, but no more than 25 percent of its net inclusionary or new construction component of the obligation, through a program that would reduce the cost of previously owned market rate units and offer them in sound condition at affordable prices to low and moderate income households. The proposed requirements of this program are listed in subsection (a) and include that at least $20,000 per unit be spent to subsidize the cost of the buy-down unit and that there be a 30-year deed restriction and mortgage lien placed upon each unit. At subsection (b) there is a requirement that the Council assess a municipality's write-down/buy-down program at the end of two years from the date of substantive certification to see if the program is working. If the program is not working, the municipality must prepare a plan to address any potentially unmet units after the initial two year period.

N.J.A.C. 5:93-5.11 is recodified as N.J.A.C. 5:93-5.12 and contains several amendments intended to clarify the status of sites addressing the 1987 to 1993 municipal fair share obligation and the procedures necessary for the site's retention, alteration or elimination from the municipal fair share plan. An amendment to subsection (b) makes clear that sites zoned for inclusionary development in the prior municipal plan shall retain their zoning in the petition addressing the 1987 to 1999 cumulative fair share obligation if the developer of a site files a development application with the municipality either prior to the expiration of the 1987 to 1993 substantive certification or prior to the municipal petition for substantive certification, whichever is later. The amendments are necessary to clarify how long such sites would retain their prior zoning and when a developer of a site must file a development application with the municipality in order to retain the prior zoning. A new subsection (c) is proposed that will include a provision for a municipality on how to eliminate a site contained in the 1987 to 1993 plan. Subsection (d), previously codified as (c), contains a notice provision to the owner of a site contained in the 1987 to 1993 housing plan, when the municipality is seeking, pursuant to (b), to replace or delete the site in its petition to meet its 1987 to 1999 fair share obligation. Subsection (d) is recodified as (e).

N.J.A.C. 5:93-5.12 recodified as N.J.A.C. 5:93-5.13 includes a proposed amendment at paragraph (a)3 regarding "prior cycle credits" in the formula, which was inadvertently omitted in the initial publication of this formula. Also, the reference within the formula to "N.J.A.C. 5:93-3" has been made more precise and now is made to "N.J.A.C. 5:93-3.2 and 3.4." Subsection (b) has been modified to make clear that the rule applies to municipalities that transferred units via an RCA during the prior cycle.

N.J.A.C. 5:93-5.13 recodified as N.J.A.C. 5:93-5.14 is proposed to be amended to provide an alternative method whereby certain municipalities may calculate their rental housing obligations. The prior single formula contained in subsection (a) was found not to apply to all municipalities, thereby necessitating the alternative formula. In paragraph (c)1 tax credits are proposed to be deleted as a municipal approach to addressing the rental obligation as tax credits are a financing source, and replaced by a statement that alternative living arrangements may be used to meet the rental obligation. At paragraph (c)2 it is made clear by adding that nonprofit corporations may sponsor rental developments to meet the rental obligation and at paragraph (c)6 a new proposed provision to the rule makes clear that rental units may be constructed and administered as part of an inclusionary development. Proposed amendments to subsection (d) make clear that the standards contained in N.J.A.C. 5:93-5.8(d) and N.J.A.C. 5:93-5.9(d) must be met by each rental unit constructed. And, subsection (e) has been amended by allowing an RCA receiver municipality the option of creating new rental units through gut rehabilitation as newly defined in the proposal at N.J.A.C. 5:93-1.1.

N.J.A.C. 5:93-6.1(a)3 is amended to correct a typographical error by the addition of "prior cycle credits" to the formula. There are two substantive proposed changes to subchapter 6. A proposed amendment at N.J.A.C. 5:92-6.2(d) adds that a receiving municipality must submit a proposed project plan within 60 days of the sending municipality's petition for substantive certification. Previously, there had been no time frame within which the municipality had to submit the project plan. At N.J.A.C. 5:93-6.4(d), the Council has proposed to delete a prior requirement that RCAs shall run concurrent with the sending municipality's period of substantive certification, and add text that would allow an RCA to be entered into at any time during a sending municipality's period of substantive certification. This rule was altered in response to several waiver requests that the Council granted to municipalities. It was based upon a reading of the Fair Housing Act and is a product of the Council's experience with RCAs that has evolved over the years. At N.J.A.C. 5:93-6.5(a), a proposed amendment has been added requiring that receiving municipalities file annual reports with the Council, as well as with the agency.

N.J.A.C. 5:93-7.2 previously exempted inclusionary developments constructed pursuant to low income tax credit rules from its requirement that at least half of all rental units be affordable to low income households, as well as from the bedroom distribution requirements of N.J.A.C. 5:93-7.3. The proposed amendments at N.J.A.C. 5:93-7.2(a), (b) and (c) will limit this exception to rental units constructed pursuant to the four percent low income tax credit.

There is also a nine percent low income tax credit and units subsidized with this tax credit will now be subject to the requirement that half be affordable to low income households, as well as to the bedroom distribution requirements of N.J.A.C. 5:93-7.3.

Amendments at N.J.A.C. 5:93-7.4(a) are proposed to simplify the criteria used in determining the rents and sales prices of units. The proposed amendments would eliminate the prior regulatory scheme in which for each size bedroom unit, half would have to be affordable to one household size and the other half affordable to a larger household size. Now, each sized bedroom unit must be affordable to one sized household consistent with Federal guidelines in the HOME Program, the Low Income Tax Credit Program and HOPE 3. Therefore, efficiency units shall be affordable to a one person household (the prior requirement); one bedroom units shall be affordable to 1.5 person households; two bedroom units shall be affordable to three person households; and three bedroom units shall be affordable to 4.5 person households. At N.J.A.C. 5:93-7.4(e), a proposed amendment is added that would require the cost of "homeowner and private mortgage insurance" to be included in the calculation used to set the initial price of a low or moderate income owner-occupied unit. At subsection (f), a proposed amendment would require that utility allowance expenses used to establish gross rent be stated in the lease of the rental unit.

Throughout subchapter 8, the word "impose" is proposed to be added at N.J.A.C. 5:93-8.1(b), 8.2(b), 8.3, 8.6(a), 8.7(a), 8.12(b), 8.18(a), (c) and (d), and 8.20(a) and (b) to the phrase "collect and spend" with regard to development fees. This proposed addition is necessary to clear up any perceived ambiguities in the prior rules. Also, at N.J.A.C. 5:93-8.8(a)5, the Council is proposing to make clear that it will not review or monitor

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development fees in court towns without a request for such review and monitoring by the court. Additionally, at N.J.A.C. 5:93-8.10(b), the rule has been amended to make clear that a rezoning is unnecessary as long as increased residential units are realized.

Proposed new rule N.J.A.C. 5:93-8.14 will allow the Council to henceforth require that any imposed and collected development fees are to be placed in an escrow account when challenged by a developer. If ultimately ordered to be returned to the developer, accrued interest on the returned amount will be paid to the developer.

The rules at N.J.A.C. 5:93-8.14 through 8.20 are proposed to be recodified as N.J.A.C. 5:93-8.15 through 8.21. Proposed amendments at 8.16(c) eliminate a reference to 8.10(c) and add language to make clear that development fees collected to finance an RCA or new construction are exempt from the 30 percent affordability requirement of (c). Proposed amendments at 8.17 list the types of reports that shall be completed on Council forms. Also, the addition of the word "impose" to the phrase "impose and expend" and variants of that phrase at 8.18, 8.20 and 8.20(b) reads "impose, collect and expend" development fees to make clear that all municipal action relative to development fees expires with the expiration of substantive certification or a judgment of repose.

At N.J.A.C. 5:93-9.2(a), the number of years for which affordability controls must last in newly constructed low and moderate sales units has been proposed to be increased from 20 to 30 years. The model affordable housing agreement at Appendix E has also been changed to reflect the proposed increase to 30 years, as has the proposed amendment at N.J.A.C. 5:93-9.8(b). At subsection (h), a proposed amendment has been added to make clear that the controls on affordability for alternative living arrangements must also extend for 30 years in order for the alternative living units to be eligible for a rental bonus. This is a new requirement.

A proposed amendment at N.J.A.C. 5:93-9.5(d) eliminates the reference to specific New Jersey Administrative Code provisions with regard to the standards to be imposed on housing trust funds. Rather, the amendment proposed requires that the money deposited in housing trust funds be subject to "the applicable COAH rules at the time." This change was made because money may stay in housing trust funds for a number of years and COAH rules may change. Therefore, this amendment will eliminate the necessity for future amendments of this particular rule.

At N.J.A.C. 5:93-9.13, the Council proposes to replace the prior requirement that if a public entity wishes to purchase an affordable unit under foreclosure, it must buy it at "the maximum permissable sales price." The Council proposes to substitute a provision that allows the public body to purchase the unit at "a negotiated price not to exceed the maximum sales price." N.J.A.C. 5:93-9.14 has also been altered to conform to the proposed amendment in N.J.A.C. 5:93-9.13.

N.J.A.C. 5:93-9.15(a) is proposed to be amended to delete its applicability to rental units. The allowable increases of rents are covered in subsection (b) of 9.15.

N.J.A.C. 5:93-10.3(a) is proposed to be amended to change the needed number of names on a list of professionals from which an inclusionary developer may choose to prepare various studies. The proposed amendment increases the number from three to six professionals. The increase in the number of names on the list is thought necessary to provide a meaningful choice for developers.

N.J.A.C. 5:93-11.6(a) and (b) are proposed to be amended to make clear that the required reports on affirmative marketing activities will be on forms approved by the Council that will be forwarded to municipalities in January of each year. The municipalities must then fill out these forms and return them to the Council by February 28 of that year. The prior requirement had the municipalities file the required reports by August 30.

Amendments are proposed at N.J.A.C. 5:93-12.1(a) to change the due date for monitoring forms from August 30 to February 28 of each year.

Social Impact

The proposed amendments and new rules contained will have a positive social impact on all of the 567 municipalities in the State of New Jersey and the population of those municipalities in that the rules are now more accurate and more clearly reflect the intentions of the Council and its procedures. Further, all low income households in New Jersey will be positively affected by these amendments and rules in that the provision of low and moderate income housing will be facilitated by these rules. Developers and municipalities will be positively impacted in that the process by which a municipality becomes certified and the process by which a developer creates affordable housing have been substantially clarified and made easier by these rules.

Economic Impact

The proposed amendments to the Council's rules do not create significant new economic impacts on the municipalities within the Council's jurisdiction or upon developers for the low and moderate income public. The requirement that municipalities now pay interest on returned development fees should have little economic impact on the municipalities, because there is also a requirement that the development fees be placed in an interest bearing account and that only the accrued interest be paid to the developer.

The new write-down/buy-down program found at N.J.A.C. 5:93-5.11 would create municipal expense of at least $20,000 per unit which is the same as a Regional Contribution Agreement minimum. However, this cost would be voluntarily entered into by a municipality as one possible option in meeting its affordable housing obligation, and is not required of any municipality.

In general, the proposed amendments to the Council's rules neither increase nor decrease the impact of the rules, but are intended to clarify the meaning of the rules that have been previously enacted.

Executive Order No. 27 Statement

The proposed amendments and new rules are not subject to Federal standards or requirements, and a Federal exceedance analysis is not applicable to the rulemaking.

Regulatory Flexibility Statement Analysis

The primary purpose of these substantive and procedural rules is to regulate and facilitate the preparation of a municipal housing element and fair share plan, in accordance with the Fair Housing Act. The regulated public consists of the municipalities within the Council's jurisdiction. While small businesses may become involved as objectors to a particular municipality's plan, they are not directly regulated by these rules. Therefore, a regulatory flexibility analysis is not required.

These rules do not regulate small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but small businesses may become involved in the Council's process as objectors and as owners of sites designated for low and moderate income housing. As objectors, small businesses may, if they choose, employ legal counsel to represent them before the Council, but they by no means need to do so.

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

5:91-1.2 Definitions

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

. . .

"Agency" means the New Jersey Housing and [Finance] Mortgage **Finance** Agency established by P.L. 1983, c.530 (N.J.S.A. 55:14K-1 et seq.).

. . .

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet the low and moderate income housing need of its region, and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, and as further described and defined in N.J.A.C. [5:92] **5:93**.

. . .

"Housing element" means that portion of a municipality's master plan, consisting of reports, statements, proposals, maps, diagrams and text, designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing, as further described by N.J.A.C. [5:92] **5:93**.

. . .

"Submission" means [the] **an adopted** housing element and fair share plan.

5:91-2.2 Filing requirements

(a) The Council shall accept a municipal housing element and fair share plan for filing **without a petition** only under the following conditions:

1. The municipal planning board has adopted the housing element as part of the municipality's master plan pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.); and

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2. The governing body of the municipality has passed a resolution of participation which:

i. Endorses the housing element and fair share plan; and

ii. Requests participation in the Council's administrative process.

5:91-3.3 Notice

(a) (No change.)

(b) In providing notice of a petition for substantive certification, the municipality shall follow this format:

NOTICE OF PETITION FOR
SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that the (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan, pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:91-3.1 et seq. Copies of said adopted Housing Element and supporting documentation are available for public inspection at the (TOWNSHIP/BOROUGH) Municipal Building, (address) New Jersey, during regular business hours. Comments or objections to said petition for Substantive Certification must be filed with the New Jersey Council on Affordable Housing, 101 South Broad Street, CN 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by _____ , which is **within** 45 days of publication of this notice.

_____
Municipal Clerk

(c) A municipality required to [amend,] refile or repetition for substantive certification, shall provide notice following this format:

NOTICE OF REPETITION FOR SUBSTANTIVE CERTIFICATION

NOTICE is hereby given that the (MUNICIPALITY) Planning Board, subsequent to public hearing, adopted a Housing Element and Fair Share Plan as an amendment to the (year) Master Plan on (date). The adopted plan is a revision of a previously adopted housing element and fair share plan, for which the (Township/Borough/Town/City) had petitioned the Council on Affordable Housing for substantive certification on (date).

A copy of the amended and adopted housing element and fair share plan is available for public inspection at the office of (Municipal Clerk, etc.) Municipal Building, located at (street address), during the hours of _____ . Any interested party may file comments or objections to the plan with the Council on Affordable Housing, 101 South Broad Street, CN 813, Trenton, New Jersey 08625-0813 and with the (Township/Borough/Town/City) by _____ , which is 45 days of publication of this notice.

(d) (No change.)

5:91-5.2 Council review

(a) After a municipality files a petition for substantive certification, the Council will prepare [a] **either a report requesting additional information to be filed with COAH within 60 days of receipt of the report or a** compliance report. The compliance report will indicate any amendments to the housing element and fair share plan necessary to achieve substantive certification. The compliance report will be submitted to the municipality for a 14-day comment period.

(b)-(g) (No change.)

5:91-5.3 Grant of substantive certification

(a) The Council will issue substantive certification of a municipality's housing element and fair share plan if:

1. The municipality's proposed housing element and fair share plan complies with this chapter and N.J.A.C. [5:92] **5:93**;

2. The housing element and fair share plan is not inconsistent with the achievement of the low and moderate income housing needs of the region as adjusted pursuant to this chapter and N.J.A.C. [5:92] **5:93**; and

3. (No change.)

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

5:91-6.2 Municipalities that have petitioned for substantive certification within two years of filing their housing element and fair share plan

(a) (No change.)

(b) Following a petition for substantive certification, the Council staff shall prepare **either a report requesting additional information to be filed with COAH within 60 days of receipt of the report or** a compliance report. The report shall be circulated to the municipality and to the objectors to the municipal submission for comments during a 14-day period.

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

5:91-6.5 Substantive certification action

(a) Upon review of the housing element and fair share plan, the mediation report pursuant to N.J.A.C. 5:91-7 and, where required, the Initial Decision from the Office of Administrative Law pursuant to N.J.A.C. 5:91-9, the Council shall issue substantive certification if:

1. The municipality's proposed housing element and fair share plan complies with this chapter and N.J.A.C. [5:92] **5:93**;

2. The housing element and fair share plan is not inconsistent with the achievement of the low and moderate income housing need of its region as adjusted pursuant to this chapter and N.J.A.C. [5:92] **5:93**; and

3. (No change.)

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

5:91-7.2 Scope of mediation

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

(d) Mediation before the Council or its designated mediator may be conducted for a period of no more than [60] **90** days after the time for the receipt of objections to a petition for substantive certification has expired. If the Council is, for any reason, dissatisfied with the progress of the mediation proceedings, or determines that mediation cannot resolve a dispute, the Council may declare an end to mediation and in its discretion (see N.J.A.C. 5:91-8) refer the matter to the Office of Administrative Law for adjudication as a contested case. The period for mediation established in this section may be extended by the Council for good cause shown.

(e)-(h) (No change.)

5:91-7.3 Mediation report

(a) At the end of mediation, the mediator shall [present a report to the Council advising the Council of the results of mediation] **prepare a mediation report and serve the municipality, objectors and other participants to the mediation with a copy of the written mediation report**. The report shall list all issues that remain in dispute between the municipality and the objectors and shall present the stipulations or other agreements reached by the municipality and the objectors.

[(b) The Council shall serve the municipality, objectors and other participants to the mediation with a copy of the written mediation report.]

[(c)]**(b)** The municipality, objectors and participants to the mediation may file comments regarding the mediation report within 14 days. The 14 day comment period shall begin with the receipt of the report[, unless the municipality must first publish notice of an amended housing element and fair share plan pursuant to N.J.A.C. 5:91-7.4. If the municipality must publish this notice, the 14 day comment period shall commence with the publication date of notice].

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

(d) The mediator shall present the mediation report to the Council advising the Council of the results of mediation.

5:91-7.4 Publication of notice of housing element and fair share plan altered as a result of mediation

(a) If the Council determines as a result of mediation, that there will be substantial amendments to the adopted housing element as originally filed, the municipality shall publish notice of the amendment, within seven days after receiving the mediation report **that has been presented to the Council**, in a newspaper of general circulation within the municipality and the county or, in the case of a municipality that intends to publish in a weekly newspaper, in the next possible edition of the weekly paper following receipt of the mediation report. The notice shall state that the housing element and fair share plan will be amended as a result of mediation.

(b) (No change.)

5:91-7.6 Reopened mediation

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

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(d) At the end of the reopened mediation, [all] **the mediator shall prepare another mediation report and serve the municipality, objectors and other participants to the mediation with a copy of the written mediation report. The report shall list all issues that remain in dispute between the municipality and the objectors and shall present the stipulations or other agreements reached by the municipality and the objectors. The municipality, objectors and participants to the mediation may file comments regarding the second mediation report within 14 days. The mediator shall present the second mediation report to the Council advising the Council of the results of the reopened mediation. All** procedures set forth in N.J.A.C. 5:91-7.5 shall be followed.

SUBCHAPTER 8. REFERRAL TO OFFICE OF ADMINISTRATIVE LAW

5:91-8.1 General

(a) In the event mediation efforts are unsuccessful, the Council upon the motion of any party or in its own discretion shall determine whether to refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case. Prior to determining whether a case is contested, the Council may in appropriate instances require all parties to submit affidavits of experts with regard to issues that require expert testimony and/or affidavits of individuals with personal knowledge of the facts at issue. Such affidavits should set forth, with specificity, facts sufficient to demonstrate there is a genuine issue that requires a hearing. From these submitted papers, the Council may determine if there is an issue of material fact that necessitates a hearing as a contested case before the [Office of Administrative Law] **OAL**.

(b) Upon determining that the matter shall be referred to the [Office of Administrative Law] **OAL** for adjudication as a contested case, the Council shall transmit the matter to the OAL together with the mediation report, the municipality's petition for substantive certification and any objections thereto, and any other papers pertinent to the adjudication.

(c) (No change.)

5:91-11.4 Review by county planning board or agencies

(a) Regional contribution agreements shall be reviewed by the county planning board or agency of the county in which the receiving municipality is located. The county planning board or agency shall consider whether or not the **regional** contribution agreement is in accordance with sound comprehensive regional planning, in accordance with the terms of the master plan and zoning ordinance of both the sending and receiving municipalities, its own county master plan, and the State Development and Redevelopment Plan (SDRP).

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

5:91-11.6 Monitoring and enforcement

(a) All regional contribution agreements shall require receiving municipalities to file annual reports with the **Council and the** Agency setting forth the progress in implementing the project plan to be produced with the funds from the regional contribution agreement. This report shall be in such form as the Council and the Agency may from time to time require.

(b) (No change.)

5:91-13.4 Notice of amendment petition

(a) A municipality which has petitioned to amend its substantive certification shall publish a notice of said petition in a newspaper of general circulation within the municipality and the county, using [the format for an amended housing element and fair share plan outlined in N.J.A.C. 5:91-3.3(c). The municipality shall make available for public inspection copies of the petition and supporting documentation within the municipality during business hours.] **this format:**

NOTICE OF AMENDMENT TO SUBSTANTIVE CERTIFICATION

Notice is hereby given that the (name of municipality) Planning Board, adopted a housing element/fair share plan on (date) which was certified by the Council on Affordable Housing (COAH) on (date). Now, the (name of municipality) is proposing to amend its certified housing element and fair share plan.

(INSERT BRIEF DESCRIPTION OF AMENDMENT)

A copy of the amendment to the housing element/fair share plan is available for public inspection at the office of (Municipal Clerk, etc.) Municipal Building, located at (street address), during the hours of _____. Any interested party must file comments or objections to the plan with the Council on Affordable Housing, 101 South Broad Street, CN 813, Trenton, NJ 08625-0813 and with the (name of municipality) within 30 days of publication of this notice.

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

5:91-15.1 Procedures for retaining development fees

(a) Municipalities that collected development fees prior to December 13, 1990, as outlined in N.J.A.C. 5:92-18.4 and 18.5, **and 5:93-8.4 and 8.5** may retain at least some portion of such fees by conforming to the requirements of N.J.A.C. 5:92-18.8(a) **and 5:93-8.8(a)** (Development fee ordinance review).

(b) In addition, municipalities that collected development fees prior to December 13, 1990 shall provide notice to each developer that paid a development fee of its request for Council review of the development fee ordinance. The municipality shall provide each developer with a copy of all information required in N.J.A.C. 5:92-18.8(a)9 **and 5:93-8.8(a)9** within seven days of the governing body's resolution to request review of its development fee ordinance.

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

(e) Following the submissions from municipalities and developers, the Council shall review and approve or disapprove the ordinance. The Council may also determine the revenues that the municipality must return to the developers that paid the fees. Municipalities shall be able to retain fees that conform to the standards in this subchapter and N.J.A.C. 5:92-18 **and 5:93-8**.

5:93-1.3 Definitions

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

. . .

["DEPE"] **"DEP"** means the New Jersey Department of Environmental Protection [and Energy].

"Developable site" means a site that has access to appropriate water and sewer infrastructure, and has received water consistency approvals from the [DEPE] **DEP** or its designated agent authorized by law to issue such approvals.

. . .

"Gut rehabilitation" means those residential units or buildings that have either undergone substantial rehabilitation where the cost exceeds 50 percent of the physical value determined in accordance with per square foot construction cost guides such as W.S. Means and Company, and F.W. Dodge Company, or have had the electrical, plumbing and heating systems totally replaced.

. . .

"Inclusionary development" means a development containing low and moderate income units. This term includes, but is not necessarily limited to, new construction, the conversion of a non-residential structure to a residential structure and the creation of new low and moderate income units through the [substantial] **gut** rehabilitation of a vacant residential structure.

. . .

"Non-conforming use" means a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

. . .

"Prior cycle credits" means credits granted by the Council for low and moderate income units constructed after April 1, 1980 as part of granting substantive certification for the 1987-1993 housing obligation. **Prior cycle credits may be requested for eligible units, except for rehabilitated units, constructed between April 1, 1980 and December 15, 1986 in petitioning to address the 1987-1999 obligation.**

. . .

"Reduction" means a one for one deduction of precredited need based on a fair share plan to construct low and moderate income units, transfer

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low and moderate income units via a regional contribution agreement and/or zone for low and moderate income housing that implements a housing element that has been certified by the Council or the Superior Court. **A reduction also includes bonus rental credits.**

. . .

"Substantial compliance" means a municipality has actually constructed or issued building permits for at least 70 percent of the new units that were part of the municipal 1987-1993 housing obligation.

. . .

"Utility allowance" means those expenses that are in addition to the base rent, such as heat, electricity and cooking fuel that are included in the 30 percent utility allowance as outlined in the lease.

. . .

5:93-2.12 Spontaneous rehabilitation

(a) (No change.)

(b) To determine the impact of spontaneous rehabilitation on municipal need to this point:

1.-5. (No change.)

6. Multiply the weighted share of regional income times two and add it to the unweighted share. Divide this sum by three. Multiply the result by the spontaneous rehabilitation projections for the housing region in which the municipality is located (see Table F, Column 1). This yields the reduction to municipal total need (plus prior-cycle prospective need) due to spontaneous rehabilitation unless the result exceeds the indigenous need. In cases where the result exceeds the indigenous need, the reduction due to spontaneous rehabilitation shall equal the indigenous need. Example:

Johnsonville's Weighted Share of 1993 Aggregate Household Income x 2 (Step 4 above)		Johnsonville's Unweighted Share of 1993 Aggregate Household Income (Step 5 above)		1993-1999 Region 5 Spontaneous Rehabilitation Estimate (Column 1)
[(.4630 + .4630	+	.01443) [+]÷ 3]	x	236 = 8

5:93-2.14 Reduction

(a) The Council shall allow a one-for-one reduction of cumulative 1987 to 1999 need for affordable housing activities undertaken from 1987 to 1993 **as part of a COAH certified or court settlement plan**. It is a reduction for units zoned for or transferred, whether or not the units have been constructed, pursuant to [Subchapter] **N.J.A.C. 5:93-**3. **The reduction also includes rental bonus credits.**

(b) (No change.)

5:93-2.15 Prior-cycle credits

A one-for-one credit shall be granted for low- and moderate-income housing constructed [subsequent] **between** April 1, 1980 and **December 15, 1986** that conforms to the criteria in N.J.A.C. 5:93-3.1 **and 3.2**. Municipal need at this point is precredited need after the reduction, minus prior-cycle credits. Prior-cycle credits cannot reduce a municipal need number below zero.

Municipal Need After Reduction	(–)	Pre-1987 Credits – (Exhibit 3-Col. 8)	=	Municipal Need After Pre-1987 Credits
400	–	101	=	299

5:93-2.16 Twenty-percent (20%) cap

(a) (No change.)

SUBCHAPTER 3. CREDITS/REDUCTIONS

5:93-3.1 General

(a) (No change.)

(b) In determining calculated need, COAH has granted prior-cycle credits. These are credits that have been granted by the Council for the construction of low and moderate income units [subsequent to] **between** April 1, 1980 **and December 15, 1986**. In determining calculated need, the Council has also provided a reduction to the municipal housing obligation based on the realistic opportunity a municipality created in response to its 1987-1993 housing need through regional contribution agreements, plans for new construction, **rental bonus credits,** or through its zoning powers. The source for this information includes data from the Council's records, county planning boards and Masters appointed by the court. To the extent that this information is incomplete or incorrect, the Council shall modify the calculated need, in accordance with this chapter.

(c) Municipalities shall not receive both a reduction and a credit for the same housing unit. The Council's intent with the reductions and the credits is to ensure that a municipality's obligation is lowered by one, **or by a rental bonus credit** provided: the municipality has created a realistic opportunity that resulted in a sound housing unit; or, if the unit has not yet materialized, the municipality continues to offer the realistic opportunity. A reduction shall be considered a credit when a low or moderate income unit is constructed (or in the case of a regional contribution agreement, [constructed or rehabilitated] **the contract terms are honored**) and appropriately restricted to a low or moderate income household.

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

(f) A credit and/or a reduction in excess of the municipal precredited need shall be applied on a one for one basis **or as a rental bonus credit** against its future housing obligation.

5:93-3.3 Credits for housing activity subsequent to December 15, 1986

(a) A municipality shall receive a one for one credit for every low or moderate income unit constructed within its borders or within a receiving municipality as a result of a regional contribution agreement that addresses its 1987-1993 housing need provided:

1. The unit has not been addressed in N.J.A.C. 5:93-[14]**2.14**, Reduction[s]; and

2. (No change.)

(b) A municipality shall also receive a rental bonus credit for every eligible unit of low and moderate income housing that meets the criteria in N.J.A.C. 5:93-5.14(d).

5:93-3.5 Reductions for unbuilt housing

(a) Where land has been zoned for low and moderate income housing, the Council shall review sites for suitability and determine if the previously zoned sites present a realistic opportunity for low and moderate income housing before granting a reduction. In its review, the Council shall include but not be limited to a consideration of environmental factors, the location of existing infrastructure and the likelihood of the current zoning to result in the creation of low and moderate income housing during the period of substantive certification. Such a review shall result in a determination of the appropriate reduction and may result in requirements for zoning amendments.

(b) For previously certified sites that remain undeveloped, a municipality may propose an alternative zoning density and set aside as the result of a developer agreement. The Council shall certify each form of zoning and calculate the higher yield in addressing the fair share obligation. If the alternative zoning is exercised and there are unmet units, the Council shall not require the municipality to zone additional sites unless there are compelling reasons. Unmet units shall be addressed in the Council's third fair share cycle.

5:93-3.6 Reductions for substantial compliance

(a) A reduction of the 1987-1999 inclusionary component of the calculated need shall be granted according to the following schedule when the Council determines that a municipality has substantially complied with the terms of its substantive certification, and has actually created, within the municipality **or issued building permits for** a substantial percentage of the new units that were part of the new units that were part of the municipal 1987-1993 housing obligation within the period of substantive certification (as extended by a grant of interim substantive certification pursuant to N.J.A.C. 5:91-14.1(a)):

Percentage of Units Completed	Reduction
90+	20 percent
80-89	10 percent
70-79	5 percent

This reduction shall be based solely on the percentage of new low and moderate income units constructed within the municipality that received substantive certification **or were the recipients of building permits**. The

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percentage of units completed shall be determined by dividing the number of new low and moderate income units actually constructed **or receiving building permits** within the municipality by the number of low and moderate income units designated for construction within the municipality in the 1987-1993 fair share plan.

Example: If the municipal housing element and fair share plan that received substantive certification designated 100 units to be constructed in the municipality and another 75 units to be transferred to a receiving municipality via a regional contribution agreement, the reduction shall be based on the percentage of the 100 units that were to be constructed within the municipality that received substantive certification.

(b) The reduction in (a) above shall only be applied to the inclusionary component of the 1987-1999 calculated need, as determined by the Council. This reduction shall be applied to the remaining inclusionary component after the Council has accepted all other reductions and credits (including any rental bonus).

Example: A municipality has a 1987-1999 precredited need of 200. It had a 1987-1993 inclusionary component of 100. All 100 new units were actually constructed **or received building permits** within the municipality. The reduction for substantial compliance is 20 percent. The remaining calculated need is 100. However, the rehabilitation component is 20, leaving an inclusionary component of 80. The 20 percent reduction is applied to the 80 remaining new units, leaving an inclusionary component of 64.

6. Multiply the weighted share of regional income times two and add it to the unweighted share. Divide this sum by three. Multiply the result by the spontaneous rehabilitation projections for the housing region in which the municipality is located (see Table F, Column 1). This yields the reduction to municipal total need (plus prior-cycle prospective need) due to spontaneous rehabilitation unless the result exceeds the indigenous need. In cases where the result exceeds the indigenous need, the reduction due to spontaneous rehabilitation shall equal the indigenous need. Example:

Johnsonville's Weighted Share of 1993 Aggregate Household Income x 2 (Step 4 above)		Johnsonville's Unweighted Share of 1993 Aggregate Household Income (Step 5 above)		1993-1999 Region 5 Spontaneous Rehabilitation Estimate (Column 1)
[(.4630 + .4630	+	.01443) [+]÷ 3]	x	236 = 8

5:93-2.14 Reduction

(a) The Council shall allow a one-for-one reduction of cumulative 1987 to 1999 need for affordable housing activities undertaken from 1987 to 1993 **as part of a COAH certified or court settlement plan**. It is a reduction for units zoned for or transferred, whether or not the units have been constructed, pursuant to [Subchapter] **N.J.A.C. 5:93-**3. **The reduction also includes rental bonus credits.**

(b) (No change.)

5:93-2.15 Prior-cycle credits

A one-for-one credit shall be granted for low- and moderate-income housing constructed [subsequent] **between** April 1, 1980 and **December 15, 1986** that conforms to the criteria in N.J.A.C. 5:93-3.1 **and 3.2**. Municipal need at this point is precredited need after the reduction, minus prior-cycle credits. Prior-cycle credits cannot reduce a municipal need number below zero.

Municipal Need After Reduction	(–)	Pre-1987 Credits – (Exhibit 3-Col. 8)	=	Municipal Need After Pre-1987 Credits
400	–	101	=	299

5:93-2.16 Twenty-percent (20%) cap

(a) (No change.)

SUBCHAPTER 3. CREDITS/REDUCTIONS

5:93-3.1 General

(a) (No change.)

(b) In determining calculated need, COAH has granted prior-cycle credits. These are credits that have been granted by the Council for the construction of low and moderate income units [subsequent to] **between** April 1, 1980 **and December 15, 1986**. In determining calculated need, the Council has also provided a reduction to the municipal housing obligation based on the realistic opportunity a municipality created in response to its 1987-1993 housing need through regional contribution agreements, plans for new construction**, rental bonus credits,** or through its zoning powers. The source for this information includes data from the Council's records, county planning boards and Masters appointed by the court. To the extent that this information is incomplete or incorrect, the Council shall modify the calculated need, in accordance with this chapter.

(c) Municipalities shall not receive both a reduction and a credit for the same housing unit. The Council's intent with the reductions and the credits is to ensure that a municipality's obligation is lowered by one, **or by a rental bonus credit** provided: the municipality has created a realistic opportunity that resulted in a sound housing unit; or, if the unit has not yet materialized, the municipality continues to offer the realistic opportunity. A reduction shall be considered a credit when a low or moderate income unit is constructed (or in the case of a regional contribution agreement, [constructed or rehabilitated] **the contract terms are honored**) and appropriately restricted to a low or moderate income household.

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

(f) A credit and/or a reduction in excess of the municipal precredited need shall be applied on a one for one basis **or as a rental bonus credit** against its future housing obligation.

5:93-3.3 Credits for housing activity subsequent to December 15, 1986

(a) A municipality shall receive a one for one credit for every low or moderate income unit constructed within its borders or within a receiving municipality as a result of a regional contribution agreement that addresses its 1987-1993 housing need provided:

1. The unit has not been addressed in N.J.A.C. 5:93-[14]**2.14**, Reduction[s]; and

2. (No change.)

(b) A municipality shall also receive a rental bonus credit for every eligible unit of low and moderate income housing that meets the criteria in N.J.A.C. 5:93-5.14(d).

5:93-3.5 Reductions for unbuilt housing

(a) Where land has been zoned for low and moderate income housing, the Council shall review sites for suitability and determine if the previously zoned sites present a realistic opportunity for low and moderate income housing before granting a reduction. In its review, the Council shall include but not be limited to a consideration of environmental factors, the location of existing infrastructure and the likelihood of the current zoning to result in the creation of low and moderate income housing during the period of substantive certification. Such a review shall result in a determination of the appropriate reduction and may result in requirements for zoning amendments.

(b) For previously certified sites that remain undeveloped, a municipality may propose an alternative zoning density and set aside as the result of a developer agreement. The Council shall certify each form of zoning and calculate the higher yield in addressing the fair share obligation. If the alternative zoning is exercised and there are unmet units, the Council shall not require the municipality to zone additional sites unless there are compelling reasons. Unmet units shall be addressed in the Council's third fair share cycle.

5:93-3.6 Reductions for substantial compliance

(a) A reduction of the 1987-1999 inclusionary component of the calculated need shall be granted according to the following schedule when the Council determines that a municipality has substantially complied with the terms of its substantive certification, and has actually created, within the municipality **or issued building permits for** a substantial percentage of the new units that were part of the new units that were part of the municipal 1987-1993 housing obligation within the period of substantive certification (as extended by a grant of interim substantive certification pursuant to N.J.A.C. 5:91-14.1(a)):

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Percentage of Units Completed	Reduction
90+	20 percent
80-89	10 percent
70-79	5 percent

This reduction shall be based solely on the percentage of new low and moderate income units constructed within the municipality that received substantive certification **or were the recipients of building permits**. The percentage of units completed shall be determined by dividing the number of new low and moderate income units actually constructed **or receiving building permits** within the municipality by the number of low and moderate income units designated for construction within the municipality in the 1987-1993 fair share plan.

Example: If the municipal housing element and fair share plan that received substantive certification designated 100 units to be constructed in the municipality and another 75 units to be transferred to a receiving municipality via a regional contribution agreement, the reduction shall be based on the percentage of the 100 units that were to be constructed within the municipality that received substantive certification.

(b) The reduction in (a) above shall only be applied to the inclusionary component of the 1987-1999 calculated need, as determined by the Council. This reduction shall be applied to the remaining inclusionary component after the Council has accepted all other reductions and credits (including any rental bonus).

Example: A municipality has a 1987-1999 precredited need of 200. It had a 1987-1993 inclusionary component of 100. All 100 new units were actually constructed **or received building permits** within the municipality. The reduction for substantial compliance is 20 percent. The remaining calculated need is 100. However, the rehabilitation component is 20, leaving an inclusionary component of 80. The 20 percent reduction is applied to the 80 remaining new units, leaving an inclusionary component of 64.

5:93-4.2 Lack of land

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

(d) Municipalities may present documentation that the Council shall use to eliminate a site or part of a site from the inventory of sites described in (c) above. Partial elimination of a site shall not necessarily eliminate an entire site as unsuitable. Municipalities may seek to eliminate sites from the inventory described in (c) using the criteria set forth below. Municipalities shall submit transparent overlays drawn to the same scale as the existing land use map depicting those sites which the municipality maintains are inappropriate for development.

1. (No change.)

2. Environmentally sensitive lands shall be excluded as follows:

i. Within the areas of the State regulated by the Pinelands Commission, Division of Coastal Resources of the [DEPE] **DEP** and the Hackensack Meadowlands Development Commission of DCA, the Council shall adhere to the policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; the Coastal Permit Program Rules, N.J.A.C. 7:7-1; Coastal Resource and Development Rules, N.J.A.C. 7:7E-1; and the Zoning Regulations of the Hackensack Meadowlands District, N.J.A.C. 19:4.

ii. In areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, municipalities may exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or [DEPE] **DEP**, whichever agency has jurisdiction; when on-site delineation is required by the Council; flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent, as determined from the U.S.G.S. Topographic Quadrangles, which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of flood hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this rule shall not prohibit construction of low and moderate income housing on the remainder of the site. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.

iii. (No change.)

3-5. (No change.)

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

5:93-4.3 Lack of water and sewer

(a) When a community has sufficient land, but insufficient water and/or sewer to support inclusionary development, the Council shall review each possible site for inclusionary development to determine if it is realistic for the site to receive the required water and/or sewer during the period of substantive certification. The Council shall require sufficient information to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in a 208 plan amendment, developed in accordance with the rules of the [New Jersey Department of Environmental Protection and Energy] **DEP**. If the site had been zoned for inclusionary development, the Council shall consider how long the site had been zoned and if the developer had filed a development application.

(b) (No change.)

(c) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the municipal housing obligation. The requirement to address the municipal housing obligation shall be deferred until adequate water and/or sewer are made available. In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

1. (No change.)

2. Municipal officials shall endorse all applications to the [DEPE] **DEP** or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council.

3. Where the [DEPE] **DEP** or its designated agent approves a proposal to provide infrastructure to a site for the development of low and moderate income housing identified in the housing element, the municipality shall permit such development; and

4. Where a municipality has designated sites for low and moderate income housing that lack adequate water and/or sewer and where the [DEPE] **DEP** or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element, the municipality shall amend its housing element and fair share housing ordinance to permit development of such site for low and moderate income housing. The amended housing element and fair share housing ordinance shall be submitted to the Council within 90 days of the site's approval by the [DEPE] **DEP** or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

(d) (No change.)

5:93-5.1 Overview of a housing element

(a) Once a municipality has subtracted its credits (pursuant to N.J.A.C. 5:93-3) from its calculated need, and/or received an adjustment pursuant to N.J.A.C. 5:93-4, it shall develop a plan to address the municipal housing obligation. In addressing the need, a municipality may address its rehabilitation component through a rehabilitation program or by creating new units. The remaining portion of the municipal housing obligation may be addressed through a combination of techniques, including, but not necessarily limited to: municipally sponsored construction; inclusionary zoning; regional contribution agreements; alternative living arrangements; [the purchase of ECHO housing;] the creation of accessory apartments; the purchase of housing units that have never been occupied; **the purchase of housing units that have been occupied;** and the purchase of housing units that have been vacant for at least 18 months. (The Council has determined that if a housing unit has been vacant for 18 months or more, it is reasonable to conclude that such a unit is not "filtering down" to low and moderate income households and that encouraging the purchase of the unit for low and moderate income households may prevent the unit from deterioration or

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vandalism.) This subchapter shall discuss the standards and, in some cases, limitations, of each implementation technique. It shall outline standards for senior citizen housing and rental housing. This subchapter shall also discuss the status of sites included in the housing element that addressed the 1987-1993 municipal housing obligation.

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

5:93-5.2 Rehabilitation

(a) (No change.)

(b) The purpose of a rehabilitation program is to rehabilitate substandard housing units occupied by low and moderate income households. A substandard housing unit is defined as a unit with health and safety code violations that require the repair or replacement of a major system. A major system shall include a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system. Upon rehabilitation, housing deficiencies shall be corrected and the house shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or, if none is available, the BOCA [National Existing Structures Code] **Property Maintenance Code, in effect at the time of evaluation.** The rehabilitation activity shall not include luxury improvements, the purchase of appliances (with the exception of stoves) or improvements that are strictly cosmetic.

(c)-(j) (No change.)

(k) The municipality, as a condition of certification, shall develop a rehabilitation manual that complies with COAH's rules and summarizes the administration of the rehabilitation program. The manual shall include a copy of the lien to be used and shall describe:

1.-2. (No change.)

3. Eligible repairs and improvements;

4.-9. (No change.)

(l)-(m) (No change.)

5:93-5.5 Municipally sponsored construction and gut rehabilitation

(a) A municipality may elect to provide low and moderate income units through a municipally sponsored construction program. A municipally sponsored construction program shall address four major areas of concern. It shall document that there is municipal control of the site(s); an administrative mechanism to construct the proposed housing; a funding plan and evidence of adequate funding capacity; and timetables for construction of the units. More specifically, the following minimum documentation shall be submitted.

1. (No change.)

2. An administrative mechanism shall be submitted for the development indicating who will [monitor construction,] income qualify applicants and administer the units once they are occupied. The municipality may contract with an outside agency to provide these functions, provided a written agreement between the administrative agency and the municipality is submitted to the Council.

3. (No change.)

4. A construction schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The construction schedule shall provide for construction to begin within two years of substantive certification. **The municipality shall indicate the entity responsible for monitoring the construction and overall development activity.**

5:93-5.8 Alternative living arrangements

(a) [Municipalities may receive credit against the municipal housing obligation for alternative] **Alternative** living arrangements **may be used to address a municipal housing obligation** by entering into an agreement for the location of such a facility with the provider of the facility or by granting preliminary approval to a developer of an alternative living arrangement.

(b) (No change.)

(c) Alternative living arrangements reserved for senior citizens shall be included with the 25 percent that may be reserved for senior citizens pursuant to N.J.A.C. 5:93-5.13.

(d) Controls on affordability on alternative living arrangements shall remain in effect for at least 10 years. To be eligible for a rental bonus (pursuant to N.J.A.C. 5:93-5.14), controls on affordability shall remain in effect for at least 30 years.

5:93-5.9 Accessory apartments

(a) [Municipalities may seek credit for up] **Up** to 10 accessory apartments **may be used to address a municipal housing obligation**. A municipality [seeking credit for accessory apartments] **using an accessory apartment program** shall:

1. Demonstrate that the housing stock lends itself to accessory apartments. The Council will favor a large (measured in square feet), older housing stock;

2. Provide at least $10,000 per unit to subsidize the creation of the accessory apartment;

3. Demonstrate that rents of accessory apartments will average 57.5 percent of median income, including utilities. The rent shall be based on the number of bedrooms in accordance with N.J.A.C. 5:93-7.4; and

4. Demonstrate that accessory apartments will be affirmatively marketed in accordance with N.J.A.C. 5:93-11.

(b) (No change.)

(c) Accessory apartments reserved for senior citizens shall be included with the 25 percent that may be reserved for senior citizens pursuant to N.J.A.C. 5:93-[5.13]**5.12**.

(d) (No change.)

(e) The Council shall assess the municipality's accessory apartment program at the end of a two-year period from date of substantive certification and shall require any necessary changes to address a shortfall, including, but not limited to the zoning of an additional site.

5:93-5.10 Purchase of housing units that have never been occupied and vacant housing units

(a) [Municipalities may receive credit against the municipal housing obligation by purchasing] **Purchasing** housing units that have never been occupied and offering them in sound condition at affordable prices and/or rents to low and moderate income households **may be used to address a municipal housing obligation**. The sales price or rent of affordable units shall conform to the standards in N.J.A.C. 5:93-[7]**7.2 and 7.4**. Municipalities that propose to purchase more than 30 percent but less than 100 percent of the [business] **market** units in any one development and restrict them to low and moderate income households shall consider the impact of such a purchase on the value of the market units within the development. Municipalities shall also consider the impact of the purchase on the economic viability of any condominium or homeowners association.

(b) [Municipalities may receive credit against the municipal housing obligation by purchasing] **Purchasing** housing units that have been vacant for at least 18 months and offering them in sound condition at affordable prices and/or rents to low and moderate income households **may be used to address a municipal housing obligation**. To [receive such credit,] **be eligible,** the municipality shall demonstrate to the Council's satisfaction, that the housing has been vacant for at least 18 months. The sales price or rent of the affordable units shall be consistent with the standards in N.J.A.C. 5:93-[7]**7.2 and 7.4**.

(c) The Council shall review plans to purchase housing units that have never been occupied and housing units that the [Council] **municipality** has determined to be vacant for at least 18 months in a manner similar to its review of municipally sponsored construction, conversion and gut rehabilitation. Affordable low and moderate income housing created pursuant to this section shall, as best as practicable, conform to the Council's bedroom mix rules (N.J.A.C. 5:93-7.3) and shall be affirmatively marketed pursuant to N.J.A.C. 5:93-11.

5:93-5.11 Write-down/buy-down of previously owned units

(a) Writing-down or buying-down the cost of previously owned market rate units and offering them in sound condition at affordable prices to low and moderate income households may be used to address a municipal housing obligation. A municipality utilizing this program shall:

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1. Propose up to 10 units but no more than 25 percent of a municipality's net inclusionary or new construction component;

2. Demonstrate that there are sufficient for-sale market rate units within the municipality on the multiple listing service for a viable program;

3. Provide at least $20,000 per unit to subsidize the cost of the buy-down unit;

4. Ensure that the sales prices shall conform to the standards in N.J.A.C. 5:93-7.4;

5. Demonstrate that at least half of the proposed units will be affordable to low income households and that the sales prices will be affordable to households earning an average 57.5 percent of median or the range of affordability will be accommodated elsewhere in the housing plan. The sale prices shall be based on the number of bedrooms in accordance with N.J.A.C. 5:93-7.4;

6. Demonstrate that the program and buy-down units will be affirmatively marketed in accordance with N.J.A.C. 5:93-11;

7. Be exempt from bedroom mix requirements pursuant to N.J.A.C. 5:93-7.3;

8. Place the 30-year deed restriction and mortgage lien on each unit as per Technical Appendix E, N.J.A.C. 5:93;

9. Designate an administrative agency that will:

i. Maintain an up-to-date inventory of units that meet the requirements of a buy-down program;

ii. Qualify and place income eligible households in low and moderate income units upon initial occupancy;

iii. Place income eligible households in low and moderate income units as they become available during the 30-year term of affordability controls;

iv. Enforce the terms of the deed restriction and mortgage lien;

v. Set up a separate interest bearing escrow account for the buy-down funds from each municipality; and

vi. Sponsor a home ownership counselling program and post purchase session for prospective purchasers; and

10. Encourage the dispersement of these units throughout the municipality;

(b) The Council shall assess the municipality's write-down/buy-down program at the end of a two-year period from date of substantive certification and the municipality shall prepare a plan to address any unmet units at that time.

5:93-[5.11]**5.12** Status of sites addressing the 1987-1993 municipal obligation

(a) (No change.)

(b) Sites zoned for inclusionary development in addressing the 1987-1993 housing obligation shall retain such zoning **in the petition addressing a 1987-1999 fair share obligation** if:

1. The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court; or

2. The developer of the site has filed a development application with the municipality **prior to the expiration of the 1987-1993 substantive certification period or the municipal petition for substantive certification whichever is later**[;].

(c) A municipality may propose to eliminate a site under N.J.A.C. 5:93-5.12(b) if there is a 12-year petition and a signed agreement between the municipality and the affected property owner of the site on a new, proposed zoning.

[(c)]**(d) When petitioning to address a 12-year obligation,** [A] **a** municipality seeking to [amend its plan to] replace or delete a site used in addressing the 1987-1993 housing obligation **that does not meet the criteria in (b) above** shall [follow the procedures set forth in N.J.A.C. 5:91-13] **provide notice at the time of petition to the owner of the site that the site is being replaced or deleted.**

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

5:93-[5.12]**5.13** Senior citizen housing

(a) Municipalities may restrict housing for senior citizens based on the following formulae:

1.-2. (No change.)

3. For municipalities that have never received substantive certification or a judgment or repose and are not seeking a vacant land adjustment:

senior citizen units = .25 (municipal precredited need – **prior cycle credits** – credits pursuant to N.J.A.C. 5:93-[3]**3.2 and 3.4** – the impact of the 20 percent cap – the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93-14.)

(b) If the municipality is transferring **or has transferred** housing units via a regional contribution agreement, the maximum amount of age restricted units in the sending municipality shall not exceed 25 percent of the newly constructed low and moderate income units to be created in the sending municipality. Housing units transferred via a regional contribution agreement may include senior citizen housing units provided that the sum of the newly constructed senior citizen units created in the sending and receiving municipalities does not exceed the total permitted above. This restriction shall not apply to the rehabilitation of existing age restricted units in either the sending or receiving municipality.

(c) (No change.)

5:93-[5.13] **5.14** Rental housing

(a) In addressing the 1987-1999 housing need, every municipality shall have an obligation to create a realistic opportunity to construct rental units. For a municipality not receiving an adjustment pursuant to N.J.A.C. 5:93-4.2, the rental obligation shall equal **.25 (municipal precredited need – prior cycle credits – impact of the 20 percent cap – the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93-14 – the rehabilitation component) or** .25 (calculated need – the impact of the 1000 unit limitation pursuant to N.J.A.C. 5:93-14 – the rehabilitation component). For a municipality that receives an adjustment pursuant to N.J.A.C. 5:93-4.2, the rental obligation shall equal 25 percent of the realistic development potential.

(b) (No change.)

(c) The municipal approach to addressing the rental obligation may include, but not necessarily be limited to, any combination of the following:

1. [Tax credits administered by the Agency and other funding administered by the Federal government, DCA and the Agency;] **Creation of alternative living arrangements pursuant to N.J.A.C. 5:93-5.8;**

2. A municipally sponsored **or non-profit sponsored** rental development;

3.-4. (No change.)

5. Permitting inclusionary sites to be developed as sales or rental housing with a density increase if the developer chooses to build rental housing. The Council shall presumptively require a minimum density of ten units per acre and a maximum set-aside of 15 percent for rental housing. Municipalities that choose a zoning response to all or part of the rental obligation shall permit such densities and set-asides on all inclusionary sites until the requirement for rental housing has been addressed[.]**;**

6. Agreements with developers to construct and administer low and moderate income rental units as part of an inclusionary development.

(d) The Council shall grant a rental bonus for rental units that are constructed and conform to the standards contained in N.J.A.C. **5:93-5.8(d) and 5.9(d) and** 5:93-7. The Council may also grant the rental bonus prior to construction when it determines that the municipality has provided or received a firm commitment for the construction of rental units. A municipality may lose the benefit of the rental bonus granted in advance of the actual construction of the rental units if the municipality has not: constructed the rental units within the time periods established as a condition of substantive certification; or granted preliminary or final approval for the construction of the rental units (where a developer agreed to construct the rental units). A municipality may also lose the benefit of a rental bonus if the preliminary or final approval is no longer valid or if the developer has abandoned the development.

1.-3. (No change.)

(e) Municipalities that choose to transfer the rental obligation via a regional contribution agreement shall do so by creating new rental units in the receiving municipality. **Gut rehabilitation units as defined in N.J.A.C. 5:93-1.3 may address the rental component.** Municipalities that transfer the rental obligation shall receive a one unit credit for each rental unit transferred.

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SUBCHAPTER 6. REGIONAL CONTRIBUTION AGREEMENTS **(RCA)**

5:93-6.1 General provisions

(a) Municipalities may propose the transfer of up to 50 percent of their housing obligation based on the **procedures in N.J.A.C. 5:91-11 and on the** following formulae:

1. For municipalities that have received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

RCA = .5 (municipal precredited need – prior cycle credits – credits pursuant to N.J.A.C. 5:93-3.4 – the impact of the 20 percent cap – the impact of the 1,000 unit limitation to N.J.A.C. 5:93-14) – any units transferred as a result of a previously approved [regional contribution agreement] **RCA**.

2. For municipalities that receive a vacant land adjustment:

RCA = .5 (prior-cycle fair share + realistic development potential + rehabilitation component – credits pursuant to N.J.A.C. 5:93-3.4) – any units transferred as a result of a previously approved [regional contribution agreement] **RCA**.

Municipalities that have not received substantive certification or a judgment of repose shall have a prior-cycle fair share of zero for this calculation. Municipalities that received a vacant land adjustment with a previous substantive certification or judgment of repose shall have a realistic development potential of zero for this calculation.

3. For municipalities that have never received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

RCA = .5 (municipal precredited need – **prior cycle credits** – credits pursuant to N.J.A.C. 5:93-[3] **3.2 and 3.4** – the impact of the 20 percent cap – the impact of the 1000 unit limitation pursuant to N.J.A.C. 5:93-14)

(b) [However, a municipality may not transfer any portion of its rehabilitation component.] A municipality may propose such a transfer to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. **However, a municipality may not transfer any portion of its rehabilitation component.** The Council shall not review [a] **an** [regional contribution agreement] **RCA** without a contractual agreement between the two municipalities.

(c) Notwithstanding the contractual agreement that initiates the review of [a] **an** [regional contribution] **RCA**, described in [(a)] **(b)** above, the Council may require any contractual amendments it deems necessary upon reviewing the [regional contribution agreement] **RCA**.

(d) (No change.)

5:93-6.2 Terms

(a) At least 50 percent of the units accepted by a receiving municipality shall be affordable to low income households. The Council may modify this requirement if it determines that the sending municipality has adequately provided for its low income housing obligation elsewhere in its housing element. In the [same] case of [regional contribution agreements] **RCAs** for scattered site rehabilitation of occupied units, the receiving community shall ensure, as best as practicable, that 50 percent of the rehabilitated units are occupied by low income households.

(b) A receiving municipality may use revenues collected as a result of [a] **an** [regional contribution] **RCA** for any activity approved by the Council for addressing the low and moderate income obligation. Eligible activities shall include, but are not necessarily limited to, those activities outlined in N.J.A.C. 5:93-5.1.

(c) (No change.)

(d) All RCAs shall require that a receiving municipality submit a proposed project plan **within 60 days of the sending municipality's petition for substantive certification** which shall be in such form and contain such information as the Agency **and the Council** may require.

(e) (No change.)

5:93-6.3 Credits

No receiving municipality shall receive credit towards its fair share obligation for units provided pursuant to [a] **an** RCA, where credit for such units has been awarded to a sending municipality.

5:93-6.4 Amount and duration of contributions

(a) In negotiating RCAs, cosmetic improvements may be included in determining the negotiated price of rehabilitating a housing unit. However, to be eligible for rehabilitation, a housing unit shall be substandard as defined in N.J.A.C. 5:93-1.3. Upon rehabilitation, housing deficiencies shall be corrected and the unit shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or if none is available, the BOCA [National Existing Structures Code] **Property Maintenance Code, in effect at the time of evaluation** (available from Building Officials and Code Administrators, Inc., 4051 West Flossmoor Road, County Club Hills, Illinois 60478-5795).

(b) (No change.)

(c) The receiving municipality may spend less than $20,000 per unit in implementing the [regional contribution agreement] **RCA**, provided the remaining funds are used for an activity approved by the Council for addressing the low and moderate income obligation. Eligible activities shall include, but are not necessarily limited to, those activities outlined in N.J.A.C. 5:93-5.1.

(d) [RCAs shall run concurrent with the sending municipality's period of substantive certification, not to exceed six years. Contributions may be prorated in municipal appropriations concurrent with the certification period, not to exceed six years.] **An RCA may be entered into at any time during the sending municipality's period of substantive certification but shall not exceed six years.**

(e) All RCAs that include a scattered site rehabilitation program shall be structured so that the final transfer payment occurs within five years of the approval of the [regional contribution agreement] **RCA**. All rehabilitation activity shall occur within the sending community's period of substantive certification. Rehabilitation schedules shall be structured for completion within five years of the approval of [a regional contribution agreement] **an RCA**. Rehabilitation schedules shall be subject to Council approval and shall not be structured to require a disproportionate share of rehabilitation during the latter portion of the five year period.

5:93-6.5 Monitoring and enforcement

(a) All RCAs shall require receiving municipalities to file annual reports with **the Council and with** the Agency setting forth the progress in implementing the project to be produced under an RCA. This report shall be in such form as the Council and the Agency may from time to time require.

(b) The Council shall take such actions as may be necessary to enforce [a] **an** RCA with respect to the timely implementation of a project by the receiving municipality. In implementing its enforcement responsibilities, the Council may:

1.-4. (No change.)

5:93-7.2 Distribution of low and moderate income units

(a) With the exception of inclusionary developments constructed pursuant to **the four percent** low income tax credit regulations **pursuant to the Internal Revenue Code Section 42(b)4**, at least half of all units within each inclusionary development shall be affordable to low income households.

(b) With the exception of inclusionary developments constructed pursuant to **the four percent** low income tax credit regulations **pursuant to the Internal Revenue Code Section 42(b)4**, at least half of all rental units shall be affordable to low income households.

(c) With the exception of inclusionary developments constructed pursuant to **the four percent** low income tax credit regulations **pursuant to the Internal Revenue Code Section 42(b)4**, at least one-third of all units in each bedroom distribution (pursuant to N.J.A.C. 5:93-7.3) shall be affordable to low income households.

5:93-7.3 Bedroom distribution

(a) (No change.)

(b) Low and moderate income units restricted to senior citizens may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of senior citizen low and moderate income units within the inclusionary development. The standard can be met by creating all one bedroom units or by creating a two bedroom unit

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for each efficiency unit. Applications to waive this standard shall be made in accordance with N.J.A.C. 5:93-**15** and shall be referred by the Council to the DCA Division on Aging for review and recommendations.

5:93-7.4 Establishing rents and prices of units

(a) The following criteria, in conjunction with realistic market information, shall be used in determining maximum rents and sale prices:

1. Efficiency units shall be affordable to one person households;

2. [One half of all one] **One** bedroom units shall be affordable to [one] **1.5** person households; [and one half of all one bedroom units shall be affordable to two person households];

3. [One half of all two bedroom units shall be affordable to two person households; and one half of all two] **Two** bedroom units shall be affordable to three person households; and

4. [One half of all three bedroom units shall be affordable to four person households and one half of all three] **Three** bedroom units shall be affordable to [five] **4.5** person households.

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

(e) Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of five percent, the monthly principal, interest, **homeowner and private mortgage** insurances, property taxes (property taxes shall be based on the restricted value of low and moderate income units) and condominium or homeowner fees do not exceed 28 percent of the eligible gross monthly income. Municipalities shall, by ordinance, require that master deeds of inclusionary developments regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. The percentage that shall be paid by low and moderate income purchasers shall be at least one-third of the condominium or homeowner association fees paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from the Council.

(f) Municipalities shall require that gross rents, including an allowance for utilities, be established so as not to exceed 30 percent of the gross monthly income of the appropriate household size referenced in (a) above. **Those utilities that are included in the utility allowance shall be so stated in the lease.** The allowance for utilities shall be consistent with the utility allowance approved by HUD for use in New Jersey.

(g) (No change.)

SUBCHAPTER 8. DEVELOPMENT FEES

5:93-8.1 Purpose

(a) (No change.)

(b) Except as otherwise provided in these rules, a municipality may only **impose,** collect and spend development fees through participation in the Council's substantive certification process or through a comprehensive review designed to achieve a judgment of repose. The exceptions to this rule are set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive. These exceptions are permitted because some communities have already received substantive certification; others have achieved a judgment of repose; and still others are litigating exclusionary zoning cases. Some of these municipalities have already collected fees. The Council has created a process for these municipalities to collect and/or retain fees. However, in the future, the ability to **impose,** collect and spend development fees shall be limited to municipalities that petition for substantive certification. Urban aid municipalities are also considered a special case. These municipalities have historically housed a disproportionate share of New Jersey's poor and, as a result, may have exceedingly high fair share obligations that would be extremely difficult to address in a six year period. Therefore, the Council will allow these municipalities to **impose,** collect **and spend** fees outside of substantive certification provided the municipality adheres to the rules in this subchapter. The rules that follow provide basic requirements for **imposing,** collecting and spending development fees. They then provide additional requirements for municipalities in various categories.

(c) (No change.)

5:93-8.2 Basic requirements

(a) (No change.)

(b) No municipality shall **impose or** collect development fees unless the municipality has adopted a housing element and the Council has approved its development fee ordinance.

(c) (No change.)

5:93-8.3 Urban aid municipalities

Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) shall not **impose,** collect or spend development fees without conforming to the requirements set forth in N.J.A.C. 5:93-8.2. Council approval of the municipal development fee ordinance shall allow the municipality to **impose and** collect development fees for a period specified by the Council, not to exceed six years, commencing with the Council's approval of the development fee ordinance. Notwithstanding any other provision of this chapter, these municipalities shall have one year from the Council's approval of their development fee ordinance to submit a plan for spending development fees. These municipalities may **impose,** collect and spend development fees without petitioning for substantive certification.

5:93-8.4 Municipalities that collected fees and received certification

(a) (No change.)

(b) The municipalities in this category shall not resume collecting development fees or spend**ing** development fees without conforming to N.J.A.C. 5:93-8.2.

(c) (No change.)

5:93-8.5 Municipalities that collected fees and are proceeding toward certification

(a) (No change.)

(b) The municipalities in this category shall not resume collecting development fees or spend**ing** development fees without conforming to N.J.A.C. 5:93-8.2.

(c) (No change.)

5:93-8.6 Municipalities that have not **imposed or** collected fees that have received substantive certification, or are proceeding toward substantive certification

(a) This rule deals with municipalities that have not **imposed or** collected development fees and that have received substantive certification or are proceeding toward substantive certification. Municipalities in this category shall not **impose or** collect fees until they have [adopted a housing element and] received the Council's approval of [its] **their** development fee ordinance. No municipality in this category shall spend development fees unless the Council has approved a plan for spending such fees.

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

5:93-8.7 Other municipalities that have not **imposed or** collected fees

(a) Except as provided for in N.J.A.C. 5:93-8.3 through 8.6 inclusive, municipalities that have not **imposed or** collected fees shall not **impose or** collect fees until they have adopted a housing element, petitioned for substantive certification and received the Council's approval of its development fee ordinance.

(b) (No change.)

5:93-8.8 Development fee ordinance review

(a) The Council shall not review a development fee ordinance unless the municipality has submitted:

1.-4. (No change.)

5. [If the municipality has received a court ordered judgment of repose a] **A** copy of the compliance plan, implementation ordinances [and] information regarding the period of time encompassed by the judgment of repose **and a request for review by the court if the municipality has received a court ordered judgment of repose. The court shall indicate if the Council is to monitor the development fees**;

6.-9. (No change.)

(b) (No change.)

5:93-8.10 Development fees; residential

(a) (No change.)

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(b) [Where there is a zoning change] **In zones** that permit[s] increased residential development, the municipality may impose a development fee of up to six percent of the equalized assessed value for each additional unit that may be realized [as a result of the rezoning].

Example: if a rezoning allowed two extra units to be constructed, the fees could equal one-half of one percent of equalized assessed value on the first unit and six percent of equalized assessed value on the two incremental units.

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

5:93-8.12 Eligible exactions, ineligible exactions and exemptions

(a) (No change.)

(b) Development fees may be **imposed and** collected when an existing structure is expanded or undergoes a more intense use. The development fee that may be **imposed and** collected shall be calculated on the increase in the equalized assessed value of the improved structure.

(c)-(f) (No change.)

5:93-8.14 Contested fees

Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by the municipality. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

5:93-[8.14]**8.15** (No change in text.)

5:93-[8.15]**8.16** Use of money

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

(c) At least 30 percent of the revenues collected from development fees shall be devoted to render units more affordable. Examples of such activities include, but are not limited to, downpayment assistance, low interest loans, and rental assistance. Development fees collected [pursuant to N.J.A.C. 5:93-8.10(c)] **to finance an RCA or a new construction project** shall be exempt from this requirement. This requirement may be waived in whole or in part when the municipality demonstrates the ability to address the requirement of affordability assistance from another source.

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

5:93-[8.16]**8.17** Monitoring

Municipalities that collect development fees shall complete and return all monitoring forms related to the collection of fees, expenditure of revenues and implementation of the plan certified by the Council or approved by the court. [Quarterly financial] **Financial** reports, [and] annual program implementation and [auditing] **monitoring** reports shall be completed on forms designed by the Council.

5:93-[8.17]**8.18** Penalties

(a) The municipality's ability to **impose and** collect fees and the Council's approval of an ordinance and spending plan shall be conditioned on compliance with all requirements of this subchapter. Occurrence of the following may result in the Council taking an action pursuant to (b) below:

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

(b) (No change in text.)

(c) The Council may, after a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., revoke development fee ordinance approval for any municipality that fails to comply with the requirements of this subchapter. Where such approval has been revoked, the Council shall not approve an ordinance permitting such municipality to **impose or** collect development fees for the remaining period of the substantive certification period or judgment of repose. With regard to municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) the Council shall not approve any ordinance permitting such municipalities to **impose or** collect development fees for the remainder of the approval period (of up to six years) following a Council determination that they failed to comply with this subchapter.

(d) Neither loss of development fees, nor loss of the municipality's ability to **impose and** collect development fees shall alter the municipality's responsibilities pursuant to substantive certification or a court ordered judgment of repose.

5:93-[8.18]**8.19** (No change in text.)

5:93-[8.19]**8.20** Ongoing collection of fees

(a) Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and have received Council approval to **impose and** collect development fees, shall not **impose or** collect such fees for more than the period specified by the Council, not to exceed a six year period, unless the municipality has refiled an adopted housing element with the Council and received the Council's approval of its development fee ordinance. These municipalities shall submit a plan for spending development fees within one year of the Council's approval of their development fee ordinance. Municipalities that fail to renew their ability to **impose and** collect development fees within the six year period may resume the **imposition and** collection of development fees by complying with the requirements of this section.

(b) Except as provided for in (a) above, the ability for all other municipalities to **impose,** collect **and expend** development fees shall expire with their substantive certification or judgment of repose, unless the municipality has filed an adopted housing element with the Council; petitioned for substantive certification; and received the Council's approval of its development fee ordinance. Municipalities that fail to renew their ability to **impose and** collect development fees prior to the expiration of their substantive certification or judgment of repose may resume the **imposition and** collection of development fees by complying with the requirements of this section.

5:93-[8.20]**8.21** (No change in text.)

5:93-9.2 Length of controls

(a) In developing housing elements, municipalities shall determine measures to assure that newly constructed low and moderate income sales units remain affordable to low and moderate income households for an appropriate period of not less than [20] **30** years. The authority shall do so by requiring all conveyances of newly constructed low and moderate income sales units subject to the Act, to contain the deed restriction and mortgage lien adopted by the Council. (See Appendix E)

(b)-(g) (No change.)

(h) Alternative living arrangements shall be controlled in a manner, suitable to the Council, that provides assurances that such a facility will house low and moderate income households for at least 10 years. **However, in order to be eligible for a rental bonus (pursuant to N.J.A.C. 5:93-5.14(d)), controls on affordability shall extend for a period of 30 years.**

5:93-9.5 Municipal option; sales units

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

(d) Money deposited in housing trust funds may not be expended until the municipality submits and the Council approves a spending plan in accordance with [N.J.A.C. 5:93-5.1(c)] **the applicable COAH rules at that time**. Money deposited in housing trust funds shall be subject to [the restrictions, monitoring requirements and penalties outlined in N.J.A.C. 5:93-8.15 through 17] **the applicable COAH rules at that time**.

5:93-9.8 Seller option; sales units

(a) (No change.)

(b) Subject to N.J.A.C. 5:93-9.9, the seller may elect to:

1. Sell to a qualified low and moderate income household at a price not to exceed the maximum permitted sales price in accordance with existing Council rules, providing the unit is regulated by the deed restriction and lien adopted by the Council and included in Appendix E, incorporated herein by reference, for a period of at least [20] **30** years; or

2. (No change.)

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

5:93-9.13 Impact of foreclosure on resale while controls are in place; sales units

A judgment of foreclosure or a deed in lieu of foreclosure to a financial institution regulated by State and/or Federal law or to a lender on the secondary mortgage market (including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) shall extinguish controls on affordable housing units provided there is compliance with N.J.A.C. 5:93-9.14. Notice of

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foreclosure shall allow the authority, the municipality, the Department of Community Affairs, the Agency or a non-profit entity to purchase the affordable housing unit at [the maximum permitted sales price] **a negotiated price not to exceed the maximum sales price** and maintain it as an affordable unit for the balance of the intended period of controls. Failure to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and prospective fair share obligation. Failure of the financial institution to provide notice of a foreclosure action to the authority shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution.

5:93-9.14 Excess proceeds upon foreclosure; sales units

In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the authority responsible for assuring affordability, any surplus funds, but only to the extent that such surplus funds exceed the difference between the [maximum] **sales** price [permitted] at the time of foreclosure and the amount necessary to redeem the debt to the financial institution, including costs of foreclosure.

5:93-9.15 Annual indexed increases while controls are in place; sales and rentals

(a) The price of an owner-occupied housing unit [and the rents of affordable housing units] may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the authority be lower than the last recorded purchase price.

(b) (No change.)

5:93-10.3 Special studies/escrow accounts

(a) It is common for municipalities to require inclusionary developers to conduct special studies related to the fiscal, traffic and environmental impacts of proposed inclusionary developments. These studies are then reviewed by municipal professionals who are paid from escrow accounts funded by the inclusionary developer as a requirement of the municipal review of the development application. The Council has determined that these studies shall not be used to alter the density of sites that are part of the municipal substantive certification. Such studies may be used to foster proper design and to determine pro-rata off-site and off-tract improvements. The Council has also determined that it is unnecessary for developers of inclusionary developments to pay for the initial preparation of such a study and for its review. Therefore, municipalities that receive substantive certification shall offer inclusionary developers the option of preparing fiscal, traffic and environmental impact studies or choosing a consultant from a list of at least [three] **six** professionals (prepared by the municipality) to prepare the studies. If the developer chooses a consultant from the municipally prepared list, the developer and municipality shall rely on the consultant's recommendations.

(b) (No change.)

5:93-11.6 Monitoring and reporting requirements

(a) Municipalities shall collect information on each applicant for low and moderate income housing on forms approved by the Council **that are forwarded to municipalities during January of each calendar year.**

(b) Municipalities shall evaluate the results of their affirmative marketing activities and file a report with the Council by [August 30th] **February 28** of each year. Such report shall include:

1.-3. (No change.)

[(b)]**(c)** The Council shall review and assess the effectiveness of the municipal affirmative marketing program. If it is deemed that the affirmative marketing program is not effective, the municipality shall be required to amend the program.

5:93-12.1 Completion of monitoring forms

(a) A municipality that has received substantive certification shall complete monitoring forms adopted by the Council and submit them to the Council no later than [August 30th] **February 28** of each year. Failure to submit monitoring forms in a timely manner may result in a Council action, including;

1. (No change.)

2. The revocation of the certification required to **impose and** collect development fees; and/or

3. (No change.)

TECHNICAL APPENDIX E
Deed Restriction and Lien
(New Construction—Sales Units)

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

AFFORDABLE HOUSING AGREEMENT

Prepared by: _____

A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Pursuant to the transfer of ownership of an affordable housing unit for the price of $ _____, [This] **this** AGREEMENT is entered into on this _____ day of _____, _____between _____ owner of the properties designated in Section II PROPERTY DESCRIPTION, hereafter "OWNER", and New Jersey Department of Community Affairs hereafter "AUTHORITY", which Authority is an instrumentality of _____ *(referred to as the "MUNICIPALITY")*, both parties having agreed that the covenants, conditions and restrictions contained herein shall be imposed on the Affordable Housing unit described in Section II PROPERTY DESCRIPTION for a period of at least _____ years beginning on _____ and ending at the first non-exempt transfer of title after _____unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

. . .

III. TERM OF RESTRICTION

A. The term, restrictions and covenants of this Affordable Housing Agreement shall begin on the later of the date a Certificate of Occupancy is issued or the date on which closing and transfer of title takes place for initial ownership.

B. The terms, restrictions and covenants of this Affordable Housing Agreement shall terminate upon the occurrence of either of the following events:

1. At the first non-exempt sale after 10 (ten) years from the beginning date established pursuant to Paragraph A above for units located in municipalities receiving State Aid pursuant to P.L. 1978, L.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b); or at the first non-exempt sale after [20 (twenty)] **30 (thirty)** years from the beginning date established pursuant to Paragraph A above for units located in all other municipalities; or

2. The date upon which the event set forth in Section IX FORECLOSURE herein shall occur.

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C. The terms, restrictions and covenants of this Affordable Housing Agreement may be extended by municipal resolution as provided for in N.J.A.C. 5:92.1 et seq. Such municipal resolution shall provide for a period of extended restrictions and shall be effective upon filing with the Council and the Authority. The municipal resolution shall specify the extended time period by providing for a revised ending date. An amendment to the Affordable Housing Agreement shall be filed with the recording office of the county in which the Affordable Housing unit or units is/are located.

D. At the first non-exempt title transaction after the established ending date, the Authority shall execute a document in recordable form evidencing that the Affordable Housing unit has been released from the restrictions of this Affordable Housing Agreement.

IV. RESTRICTIONS

A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located. However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.

B. The Owner shall not sell the Affordable Housing unit to anyone other than a Purchaser who has been certified utilizing the income verification procedures established by the Authority to determine qualified Low and Moderate Income-Eligible Households.

C. An Owner wishing to enter a transaction that will terminate controls as specified heretofore in Section III TERM OF RESTRICTION shall be obligated to provide a Notice of Intent to Sell to the Authority and the Council. An option to buy the unit at the maximum restricted sales price as calculated by the Index shall be made available to the Municipality, the Department, the Agency, or a qualified non-profit organization as determined by the Council for a period of ninety (90) days from the date of delivery of the Notice of Intent to Sell. The option to buy shall be by certified mail and shall be effective on the date of mailing to the Owner.

1. If the option to buy is not exercised within ninety (90) days pursuant to Paragraph C above, the Owner may elect to sell the unit to a certified income-eligible household at the maximum restricted sales price as calculated by the Index provided the unit continues to be restricted by an Affordable Housing Agreement and a Repayment Note for a period of up to [twenty (20)] **thirty (30)** years.

2. Alternately, the Owner may also elect to sell to any purchaser at a fair market price. In this event, the Owner shall be obligated to pay the municipality 95% of the Price Differential generated at the time of closing and transfer of title of the Affordable Housing unit after restrictions have ended as specified heretofore in Section III TERM OF RESTRICTION.

3. If the Owner does not sell the unit within one (1) year of the date of delivery of the Notice of Intent to Sell, the option to buy shall be restored to the municipality and subsequently to the Department, the Agency or a Non-Profit approved by the Council. The Owner shall then be required to submit a new Notice of Intent to Sell the affordable unit to the Authority.

D. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and requirements duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by Low and Moderate Income-Eligible Households throughout the duration of this Agreement.

. . .

HEALTH

(a)

HEALTH CARE FINANCING SYSTEMS

Hospital Financing

Proposed Readoption with Amendments: N.J.A.C. 8:31B

Proposed Repeals: N.J.A.C. 8:31B-3.70, 4.37, 4.41 through 4.41N, 4.93, 4.99, 4.102, 4.116, 4.120, 4.122 and 4.123

Authorized By: Len Fishman, Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1995-339.

Submit comments to:

Kathleen A. Brennan, Director
New Jersey State Department of Health
Health Care Financing Systems
CN 360, Room 601-B
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

N.J.A.C. 8:31B, Hospital Financing, expires on August 17, 1995 pursuant to the requirements and criteria of Executive Order No. 66(1978). The Department of Health has reviewed the rules and, with the following exceptions, has determined them to be reasonable and proper for the purposes of carrying out the requirements of the Health Care Facilities Planning Act.

The chapter consists of four subchapters as follows: General Provisions, Hospital Reporting Uniform Bill-Patient Summary (Inpatient), Procedural and Methodological Regulations, and Financial Elements and Reporting. This chapter was extensively modified in 1993 after the enactment of P.L. 1992, c.160, the Health Care Reform Act of 1992, which deregulated hospital rates.

Subchapter 1, General Provisions, specifies the purpose and scope of the chapter and definitions of frequently used terms. This subchapter is proposed for readoption without change.

Subchapter 2, Hospital Reporting of Uniform Bill—Patient Summaries (Inpatient), provides the basis for standard patient data reporting system. This subchapter is designed to incorporate the National Uniform Bill (UB-92, HCFA-1450) as the common billing format for all payers and the standard reporting for the Department of Health. This subchapter is proposed for readoption without change.

Subchapter 3, Procedural and Methodological Regulations, are the minimum necessary steps for implementing the Health Care Facilities Planning Act, P.L. 1971, c.136 as amended by P.L. 1978, c.83, P.L. 1991, c.187 and P.L. 1992, c.160. In N.J.A.C. 8:31B-3.3, the Department proposes continuation of financial reporting requirements in support of its statutory and regulatory functions for health planning, licensing and the provision of consumer information. Under this proposal, N.J.A.C. 8:31B-3.3 which currently requires hospitals to submit annual cost information, would include the requirement for quarterly reporting of key financial data. This interm quarterly data is needed and will be useful because final annual information is not available until five months after the close of the calendar year. N.J.A.C. 8:31B-3.3 has been amended to specify financial statement information that is necessary in order to gauge the financial viability of hospitals and to allocate subsidy amounts. In addition, the section (N.J.A.C. 8:31B-3.26) which requires hospitals to submit annual charge masters to the Department is modified so that changes must be reported only at the specific request of the Commissioner. The section which requires hospitals to report any changes in their charges is eliminated. N.J.A.C. 8:31B-3.43 is amended to delete certain rate setting terms. Also, sections relating to the revenue cap calculation will be eliminated. The revenue cap concept was initiated by P.L. 1992, c.160 and was limited to the 1993 rate setting transition year. Therefore, the monitoring standards for the revenue cap should be eliminated.

Subchapter 4, Financial Elements and Reporting, provides for uniform reporting of hospital data. It is amended to eliminate charity care sections (N.J.A.C. 8:31B-4.37 and 4.41 through 4.41N) which are duplicative of, and contrary to, recently adopted rules (see 27 N.J.R. 1995(a)) on this subject from the Division of Medical Assistance and Health Services (Medicaid) and the Essential Health Services Commission.

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N.J.A.C. 8:31B-4.38, Charity care and reduced charge charity care, defines the services which are eligible for reimbursement under the Charity Care Subsidy Fund. The rule is revised to reference Medicaid and the Essential Health Services Commission rules at N.J.A.C. 10:52-10, Charity Care Eligibility.

Certain sections of the Financial Elements and Reporting rules had historically included footnotes to specify that certain elements were not to be reported as described in the rule, but rather to conform to a previous rate setting system (SHARE). These sections are amended so that the text embodies the SHARE reporting format and no longer includes footnotes. It does not require any changes in hospital reporting.

The sections affected by this technical change include N.J.A.C. 8:31B-4.52, Physician Compensation—Hospital Component; N.J.A.C. 8:31B-4.53, Physician Compensation—Professional Component; N.J.A.C. 8:31B-4.89, Drugs Sold to Patients; N.J.A.C. 8:31B-4.95, Occupational and Recreational Therapy; N.J.A.C. 8:31B-4.97, Organ Acquisition; N.J.A.C. 8:31B-4.99, Psychiatric/Psychological Services; N.J.A.C. 8:31B-4.102, Speech Pathology and Audiology; N.J.A.C. 8:31B-4.115, Research; N.J.A.C. 8:31B-4.116, Nursing and Allied Health Education; N.J.A.C. 8:31B-4.117, Graduate Medical Education; N.J.A.C. 8:31B-4.118, General Administrative Services; N.J.A.C. 8:31B-4.119, Inpatient Administrative Services; N.J.A.C. 8:31B-4.120, Outpatient Administrative Services; N.J.A.C. 8:31B-4.122, Employee Health Insurance; and N.J.A.C. 8:31B-4.123, Repairs and Maintenance.

In other areas, requirements that had previously been found in the instructions to the annual reporting forms have been transferred to the regulations. Again, these make no changes to the longstanding reporting requirements. These sections includes: N.J.A.C. 8:31B-4.74, Pediatric Acute Care Units; N.J.A.C. 8:31B-4.80, Newborn Nursery; N.J.A.C. 8:31B-4.03, Home Health Agency; N.J.A.C. 8:31B-4.84, Skilled Nursing Facility; N.J.A.C. 8:31B-4.87, Delivery and Labor Rooms; N.J.A.C. 8:31B-4.19, Laboratory; N.J.A.C. 8:31B-4.93, Neurology, Diagnostic; N.J.A.C. 8:31B-4.100, Radiology, Diagnostic; N.J.A.C. 8:31B-4.105, Other General Services; N.J.A.C. 8:31B-4.111, Social Services; N.J.A.C. 8:31B-4.112, Plant; N.J.A.C. 8:31B-4.113, Building and Fixed Equipment; N.J.A.C. 8:31B-4.114, Physicians, N.J.A.C. 8:31B-4.125, Interest; N.J.A.C. 8:31B-4.126, Legal Fringe Benefits; N.J.A.C. 8:31B-4.127, Pensions; N.J.A.C. 8:31B-4.128, Policy Fringe Benefits; and N.J.A.C. 8:31B-4.129, Reconciling Items.

The proposed readoption also corrects the name of the $5.00 fee per adjusted admission from the former "Hospital Rate Setting Commission" fees to the "health planning" fees mandated by P.L. 1992, c.160. A fee increase to $10.00 per adjusted admission is currently pending before the Legislature (A-2616).

Social Impact

N.J.A.C. 8:31B is primarily a recordkeeping and reporting system for hospital costs, revenue and volume. All sections are aimed toward gathering a comprehensive and comparable hospital data system which will permit assessments to be made of the relative financial viability of New Jersey hospitals. This has a positive social impact in that strong hospitals have the resources to be quality hospitals. Financial difficulties can be an early warning signal for quality concerns.

Continued collection of timely financial and cost data is critical to most of the Department's activities with regard to public health activities, including planning, licensing and consumer information. Hospitals and payers will continue to have access to this data to help them function in a deregulated hospital market. This financial information will assist the Department, hospitals, consumers, employers, health insurance companies and other interested parties in the timely monitoring and review of hospital costs and revenues.

Areas that are eliminated will have no social impact. The repeal of N.J.A.C. 8:31B-3.70 removes a rate setting artifact which was only relevant for the 1993 rate setting transition year. Virtually all substantive sections of N.J.A.C. 8:31B-4.37 and 4.41 were transferred to Medicaid and the Essential Health Services Commission in N.J.A.C. 10:52-10.

There is no social impact to the changes in Subchapter 4 because they reconcile the regulations to current practice rather than require any change by the hospitals.

Economic Impact

The proposed readoption of N.J.A.C. 8:31B should have little economic impact on any hospital. Hospitals routinely prepare quarterly financial reports as part of their internal management information systems and have already been submitting yearly financial reports to the Department. Hospital reporting costs will go down due to the elimination of the revenue cap monitoring provisions of N.J.A.C. 8:31B-3.70.

There is no economic impact to the changes in Subchapter 4. The requirements are already being met by the hospitals.

The overall economic impact of this chapter has been significantly reduced since the passge of P.L. 1992, c.160 which deregulated hospital rates. Areas of the Chapter which would have an economic impact on hospitals, payers or consumers include the reporting requirements in N.J.A.C. 8:31B-3.3, the restrictions on the types of services covered by charity care in N.J.A.C. 8:31B-4.38, and the utilization review provisions in N.J.A.C. 8:31B-3.76 through 3.82.

Executive Order No. 27 Analysis

The rules being proposed for readoption have been in existence since 1979. To meet the requirements of Executive Order No. 27, these standards have been analyzed and compared to Federal cost reporting requirements. Based upon the Department's analysis, the State Standards appear to exceed Federal standards in some instances, as described and justified below.

Subchapters 1 and 2 include no areas in which there are Federal requirements. The Federal government requires cost reporting for all hospitals that participate in Medicare. The Medicare cost reports are similar in scope to the New Jersey cost reports but do not include any definitions that would facilitate consistency and comparability between data reports. Medicare's cost reports are solely reimbursement driven; they are used to set Medicare rates. New Jersey no longer has a rate setting system; therefore the focus of each report is different. New Jersey's data is used for planning, for licensure and for public health purposes.

The marginal costs associated with quarterly data reporting should be minimal because hospitals would typically process this data for their own internal uses. The Department cannot quantify how many person hours the annual reporting process takes because there have been significant reductions in the number of forms that are requested. A task force has been established to advise the Department on further streamlining of the system.

The benefits of a comparable, consistent data base available across hospitals and over a decade is a valuable resource for policymakers, as well as for researchers. The magnitude of the benefit also cannot be quantified, given that the value will depend on the number of users and scope of their work in a given year.

Regulatory Flexibility Statement

This proposed readoption would not affect small businesses as they are defined in the Regulatory Flexibility Act N.J.S.A. 54:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:31B all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:31B.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 8:31B-3.70, 4.37, 4.41 through 4.41N, 4.93, 4.99, 4.102, 4.116, 4.120, 4.122 and 4.123.

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

8:31B-3.3 Uniform Reporting: Current costs **and other financial data**

(a) The Commissioner shall collect and review the actual costs for the institutions as reported in accordance with the Financial Elements and Reporting **rules** (N.J.A.C. 8:31B-4). Costs so reported shall be subject to revision due to subsequent audits in accordance with N.J.A.C. 8:31B-3.17.

(b) In addition to (a) above, hospitals shall submit, on a quarterly basis, unaudited financial data to the Department. The data shall be submitted within 45 days from the end of each of the first three quarters and audited financial data by May 31 for the year end (December 31) fourth quarter. This data shall consist of:

1. Cumulative (year-to-date) income statements and balance sheets elements in a format to be supplied by the Department. The information shall agree with the hospitals' internally generated unaudited quarterly data and with the audited year end financial statement data. Except as otherwise provided in these rules, the information shall be consistent with Generally Accepted Accounting Principles (GAAP). Elements which shall be reported are as follows:

i. Net patient service revenue, including subsidy receipts which may include, but are not limited to, funds related to charity care, other uncompensated care, hospital relief fund, and mental health;

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ii. Other operating revenue;
iii. Total operating revenue;
iv. Depreciation;
v. Interest;
vi. All other operating expenses;
vii. Total operating expenses;
viii. Income or loss from operations;
ix. Non-operating revenue;
x. Extraordinary gains or losses;
xi. Net income or loss;
xii. Cash and equivalents, which shall not include the current portion of assets whose use is limited;
xiii. Net patient accounts receivable;
xiv. Total current assets;
xv. Board designated and Plant Replacement and Equipment funds, excluding bond trustee funds;
xvi. Total assets;
xvii. Current portion of long term debt;
xviii. Total current liabilities;
xix. Long term debt;
xx. Fund balances;
xxi. Principal payments, which are defined as monthly payments made to date on any long term debt, excluding repayment of working capital loans;
xxii. Total admissions;
xxiii. Same day medical admissions;
xxiv. Total patient days;
xxxv. Total same day surgeries;
xxvi. Total outpatient visits;
xxvii. Emergency room visits (net of admissions);
xxviii. Charity care, charges foregone for treating charity patients; and
xxix. Subsidy receipts, which may include, but are not limited to, funds related to charity care, other uncompensated care, hospital relief fund and mental health.

[(b)](c) Late submission of current cost **and financial** data, as defined in **(b) above and** N.J.A.C. 8:31B-4.6(c), including Audited Financial Statements, will result in a penalty of $200.00 per working day past the appropriate submission date.

8:31B-3.25 Net income from other sources

(a) The new gain (loss) from Other Operating and Non-Operating Revenues (as defined in N.J.A.C. 8:31B-4.61 through 4.67), and expenses of the reporting period [which] are items considered as recoveries of or increases to the Costs Related to Patient Care (see N.J.A.C. 8:31B-4.61 through 4.67) as reported to the New Jersey State Department of Health [are subtracted from (added to) costs of the Preliminary Cost Base/Certified Revenue Base].

(b) Such revenue [for PCBs/CRBs established using data from the Uniform Cost Reporting Regulation] shall include all Other Operating and Non-Operating Revenues and Expenses reported per SHARE cost center costs and "expenses recoveries" as Case B (see N.J.A.C. 8:31B-4.61 through 4.67), and all other items reported per the Uniform Cost Reporting Regulation as to their Case specified in N.J.A.C. 8:31B-4.61 through 4.67.

8:31B-3.43 Adjustment of charges

[(a)] A hospital shall submit to the Commissioner **upon request** a copy of its charges in use during the current year for review and monitoring purposes.

[(b) A hospital must notify the Commissioner of any charges adjusted throughout the year which alter overall estimates of net revenue to be collected].

8:31B-3.66 [Commission] **Health planning** fees

(a) A charge of [up to] $5.00 per adjusted admission, as defined by the American Hospital Association, for each adjusted admission in the **most recent complete** year [of the current cost base] shall be assessed each [institution for which the Commission determines a preliminary cost base] **acute care hospital.**

(b) (No change.)

8:31B-4.38 Charity care and reduced charge charity care

(a) Charity care includes only the reasonable cost of the following:

1. Charity care for services, provided the patient is qualified as eligible pursuant to N.J.A.C. [8:31B-4.37] **10:52-10**;

2. Advanced life support (ALS) services provided pursuant to P.L. 1984, c.146 (N.J.S.A. 26:2K-7 et seq.), provided the patient is qualified as eligible for charity care pursuant to N.J.A.C. [8:31B-4.37] **10:52-10**;

3. Charity care as defined by following N.J.A.C. [8:31-4.37] **10:52-10** for outpatient dialysis services provided after September 1, 1987 to patients ineligible for Medicare coverage. Reasonable costs shall be limited to the lower of the established Medicaid rate or the prospectively determined composite rate as established by Medicare. The amount reported by the hospital as charity care shall not include Medicare co-insurance amounts, since Medicare will reimburse providers for the amount, provided the patient is eligible for charity care pursuant to N.J.A.C. [8:31B-4.37] **10:52-10.**

(b) (No change.)

8:31B-4.52 Physician Compensation-Hospital Component[1]

That portion of compensation for a physician's (M.D., D.O., D.D.S./M.D.) activities, provided through agreement with a hospital, representing services which are not directly related to an identifiable part of the medical care of an individual patient is the hospital component of physician compensation, and must be split between salaries and fees per N.J.A.C. 8:31B-4.131. Hospital services include teaching, research conducted in conjunction with and as part of patient care (to the extent that such costs are not met by special research funds), administration, general supervision of technical personnel, laboratory quality control activities, committee work, performance of autopsies, and attending conferences as part of the physicians' hospital service activities. The allocation of physician compensation between hospital and professional components and documentation thereof is to be in accordance with Medicare HIM-15, Section 2108 for provider component.

[____

[1]In an amendment to the Financial Elements and Reporting, entitled Uniform Cost Reporting Regulation, these categories were reaggregated into the SHARE grouping in order to simplify the reporting requirements and to allow both SHARE and S.446 reporting requirements to be accommodated in one reporting format.]

8:31B-4.53 Physician Compensation-Professional Component[1]

That portion of compensation for a physician's services provided through agreement with a hospital pertaining to activities which are directly related to the medical care of an individual patient is the professional component of physician compensation, (i.e., renumeration for the identifiable medical services by the physician which contribute to the diagnosis of the patient's condition or to his treatment) and must be split between salaries and fees per N.J.A.C. 8:31B-4.131. The allocation of physician compensation between hospital and professional components and documentation thereof is to be in accordance with Medicare HIM-15, Section 2108.

[____

[1]In an amendment to the Financial Elements and Reporting, entitled Uniform Cost Reporting Regulation, these categories were reaggregated into the SHARE grouping in order to simplify the reporting requirements and to allow both SHARE and S.446 reporting requirements to be accommodated in one reporting format.]

8:31B-4.56 Non-Medical and Non-Surgical Supplies[1]

Non-Medical and Non-Surgical Supplies include the invoice/inventory cost of supplies, instruments, and minor equipment (other than Medical and Surgical Supplies) required for the operation of a hospital for purposes other than the direct provision of care to a patient and reported in the using cost and revenue center per N.J.A.C. 8:31B-4.131. All rebates and quantity purchase discounts are to be offset against these costs as a reconciliation per N.J.A.C. 8:31B-4.66(c) and 8:31B-4.131.

[____

[1]In an amendment to the Financial Elements and Reporting, entitled Uniform Cost Reporting Regulation, these categories were reaggregated into the SHARE grouping in order to simplify the reporting requirements

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and to allow both SHARE and S.446 reporting requirements to be accommodated in one reporting format.]

8:31B-4.74 Pediatric Acute Care Units (PED)

(a) Function:

1. Pediatric Acute Care Units provide care to Pediatric patients (normally children less than 14 years and including "boarder patients") in Pediatric nursing units on the basis of physicians' orders and approved nursing care plans. Pediatric Acute **Care** should include the costs and revenues associated with all patients, regardless of age, treated in units normally reserved for the care of patients less than 14 years of age and does not include costs and revenues of treating patients less than 14 years in Medical-Surgical and Pediatric Acute Units. Cost and revenue associated with swing beds ([i.e.], **that is,** those not designated excluding for one type of patient [are to] **shall** be apportioned among the appropriate Routine Service Centers as defined herein based on actual utilization.

2. Special costs shall be allocated as follows: Costs associated with detained newborns should be included in the Pediatric Acute Care Unit (PED). The allocation of detained newborn costs between the Newborn Nursery and the Pediatric Acute Care Unit (PED) should be accomplished by applying a ratio of newborn charges to detained infant charges or the percentage of detained infants to total newborns. Housekeeping costs in Newborn Nursery (NBN) should be reclassified to Housekeeping (HKP). The method chosen for these allocations must be consistent from year to year.

[2.]**3.** All revenue generated from charge differentials between private and semi-private rooms (except those assigned for medical necessity) is to be reported as a reconciliation per [instructions in] N.J.A.C. 8:31B-4[, Part IV]. Medical and Surgical Supplies should be reported in accordance with N.J.A.C. 8:31B-4.55.

[3.]**4.** Functions include serving and feeding of patients; collecting of sputum, urine and feces samples; monitoring of vital life signs; operating of specialized equipment related to this function; preparing of equipment and assistance to physician in changing of dressings and cleansing of wounds and incisions; observing and recording emotional stability of patients; assisting in bathing patients and helping into and out of bed; observing patients for reaction to drugs; administering specified medication; infusing I.V. fluids; answering of patients' call signals; and keeping patients' room (personal effects) in order.

(b) (No change.)

8:31B-4.80 Newborn Nursery (NBN)

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

(c) Special costs shall be allocated as follows: Costs associated with detained newborns should be included in the Pediatric Acute Care Unit (PED). The allocation of detained newborn costs between the Newborn Nursery and the Pediatric Acute Care Unit (PED) should be accomplished by applying a ratio of newborn charges to detained infant charges or the percentage of detained infants to total newborns. Housekeeping costs in NBN should be reclassified to Housekeeping (HKP). The method chosen for these allocations must be consistent from year to year.

8:31B-4.83 [Home Health Agency (HHA)] **Off-Site Health Services (OHS)**

(a) Function:

[A home health agency provides care to patients normally at their place of residence in accordance with the definitions of services contained in Medicare HIM-11. Expenses and Revenues of ancillary services performed at homes of patients serviced under a home health program should be reported in the appropriate ancillary service center.] **Offsite Health Services encompass health care services rendered to patients outside the facility and branches of the facility. This cost center includes the direct costs (supplies, leased equipment, etc.) of all services to patients which are not defined as emergency room, clinic or private ambulatory patients. Services include home health care, community nursing, and offsite psychiatric services. Examples of functions included are travel, operating specialized equipment, nursing care, counseling, educating, rendering treatments and advising patients about the availability of specific health services.**

(b) [Units of Service: Home Health Visits] **A home health agency provides care to patients normally at their place of residence in accordance with the definition of services contained in Medicare HIM-11. Expenses and revenues of ancillary services performed at homes of patients serviced under a home health program should be reported in the appropriate ancillary service center.**

8:31B-4.84 [Reserved] **Skilled Nursing Facility (SNF)**

(a) For reporting purposes, the definition of a Skilled Nursing Facility contained in the Health Insurance for the Aged Program, Title XVIII of the Social Security Act and N.J.A.C. 8:39 shall be incorporated herein by reference.

8:31B-4.87 Delivery and Labor Rooms (DEL)

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

(c) Special costs shall be allocated as follows: Housekeeping costs in Delivery and Labor Rooms (DEL) should be reclassified to housekeeping (HKP).

8:31B-4.89 Drugs Sold to Patients (DRU)[1]

(a) (No change.)

[[1]In order to simplify hospital reporting requirements and to allow both SHARE and S.466 reporting requirements to be accommodated in one reporting format, the reporting requirements for this cost center have, in an amendment entitled Uniform Cost Reporting Regulation, been temporarily modified to allow Drugs and I.V. solutions to be reported in accordance with SHARE definitions.]

8:31B-4.90 [Electrocardiology (EKG)[1]] **Electrodiagnosis (EDG)**

(a) Function:

1.-3. (No change.)

4. This center provides diagnostic neurology services such as electroencephalography and electromyography under the direction of a qualified physician. Specialized equipment is used to record electromotive variations in brain waves and to record electrical potential variation for diagnosis of muscular and nervous disorders.

5. The costs of compensation of physicians involved in diagnostic neurology as well as the revenue generated by these physicians for their activities are to be reported to the extent that their compensation is provided through an agreement with the hospital.

(b) [Units of Service: Electrocardiogarms] **Special Cost Considerations are as follows: Costs of angiograms performed by cardiologists should be reported in Diagnostic Radiology, except that such procedures which are coronary invasive should be reported in Cardiac Catheterization.**

8:31B-4.91 Laboratory **(LAB)**

(a) Function:

1. (No change.)

[2. The procedure (drawing), receiving, storing, typing and crossmatching of whole blood, blood components and blood products should be included in Laboratory. Purchase cost of and patient payments for blood and blood products are to be excluded and reported per instructions in N.J.A.C. 8:31B, Part IV. The costs associated with procuring blood donations are to be included in Laboratory, but payments to donors are to be excluded and reported as a reconciliation per [instructions in] N.J.A.C. 8:31B-4, Part IV].

[(b) Units of Services: College of American Pathologists Relative Value Units.]

8:31B-4.95 [Occupational and Recreational Therapy (OCC)[1]] **Other Physical Medicine (OPM)**

(a) Function:

1. Occupational therapy is the application of purposeful, goal-oriented activity, under the direction of a registered therapist and medical director, in the evaluation, diagnosis, and/or treatment of persons whose function is impaired by physical illness or injury, emotional disorder, congenital or developmental disability, or the aging process, in order to achieve optimum, functioning, to prevent disability, and to maintain health.

[2.] Recreational Therapy is the employment of sports, dramatics, arts and other recreational programs, under the direction of a registered therapist and medical director to stimulate the patient's recovery rate.

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

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

2. Speech Pathology provides therapeutic treatment for disorders of production, reception and perception of speech and language. Audiology provides and coordinates services to persons with impaired peripheral and/or central auditory function. This includes the detection and management of any existing communicating handicaps centering in whole or in part on the hearing function. Such activities are coordinated with medical evaluation and treatment of hospital patients.

i. Functions include audiologic assessment (including basic audiometric testing and screening, examination for site of lesions, nonorganic hearing loss and various parameters of auditory processing abilities essential for communication function); hearing aid evaluation, selection, orientation, adjustment and other technical related services; audiologic habilitation and rehabilitation including the development, remediation or conversation of receptive and expressing language abilities; demonstrating and evaluating amplification devices and altering systems; evaluating excessively noisy environments; determining through interviews and special tests on the etiology, history and severity of speech disorders; and special speech, hearing and language remedial procedures, counseling and guidance.

[(b) Units of Service: Visits.]

[[1]In order to simplify hospital reporting requirements and to allow both SHARE and S.446 reporting requirements to be accommodated in one reporting format, the reporting requirements for this cost center have, in an amendment entitled Uniform Cost Reporting Regulation, been temporarily modified to allow the costs in this cost center to be reported to the Department of Health in the same manner specified in SHARE cost center definitions.]

8:31B-4.97 [Organ Acquisition (ORG)[1]] **Blood Bank (BBK)**

[(a) Function

1. This center acquires, stores, and preserves all kidneys and other human organs for their eventual transplantation to patients of the hospital. All direct costs incurred by the Laboratory, Operating and Recovery Rooms and other hospital departments in acquiring organs are to be transferred to the Organ Acquisition Center. The costs and revenues (or value of credits) of acquiring organs for a pool or for transportation to a patient of another hospital should be reported as an organ donation reconciliation per N.J.A.C. 8:31B-4, Part IV.

2. Functions include conducting sterile autopsies to obtain organs; purchasing of organs from a central pool; harvesting; and preservation of organs.

(b) Units of Service: Transplants.

[[1]In order to simplify hospital reporting requirements and to allow both SHARE and S.446 reporting requirements to be accommodated in one reporting format, the reporting requirements for this cost center have, in an amendment entitled Uniform Cost Reporting Regulation, been temporarily modified to allow the costs in this cost center to be reported to the Department of Health in the same manner specified in SHARE cost center definitions.]

The Blood Bank cost center includes the procedure (drawing), receiving, storing, typing and crossmatching of whole blood, blood components and blood products. Purchase cost of and patient payments for blood and blood products are to be excluded and reported per N.J.A.C. 8:31B, Part IV. The costs associated with procuring blood donations are to be included in Blood Bank, but payments to donors are to be excluded and reported as a reconciliation per N.J.A.C. 8:31B-4[, Part IV].

8:31B-4.100 Radiology, Diagnostic (RAD)

(a) (No change.)

[(b) Units of Service: California Medical Association Relative Value Units.]

8:31B-4.104 Central **Sterile** Supply [Services] (CSS)

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

8:31B-4.105 [(Reserved)] **Other General Services (OGS)**

The Other General Services cost center should include general service activities which may vary between hospitals such as: elevator operation; grounds maintenance; maintenance of personnel (excluding dormitories for students and residents); medical library; medical photography; motor pool; plant security and property taxes.

8:31B-4.111 [Social Services (SOC)[1]] **Patient Care Coordination (PCC)**

(a) Function:

1. Patient Care Coordination encompasses utilization review, coordination of pre-admission testing, patient representatives, admission reviews, patient care evaluation and social services. Social Services obtains, analyzes, interprets social and economic information to assist in diagnosis, treatment and rehabilitation of patients. These services include counseling of staff and patients in case units and group units; participation in development of community social and health programs and community education. Revenues received by hospitals should not be reported here, but should be reported with the routine or ambulatory revenue centers where social services were provided and billed for.

2. (No change.)

[(b) Statistics: Percentage of Time Spent.

[[1]In order to simplify hospital reporting requirements and to allow both SHARE and S.446 reporting requirements to be accommodated in one reporting format, the reporting requirements for this cost center have, in an amendment entitled Uniform Cost Reporting Regulation, been temporarily modified to allow the costs in this cost center to be reported to the Department of Health in the same manner specified in SHARE cost center definitions.]

8:31B-4.112 [(Reserved)] **Plant (PLT)**

(a) The Plant center is responsible for maintenance and operation of an institution's buildings and equipment in a state of readiness required to perform hospital operations. Repairs and maintenance of physical plant not used for services related to patient care (for example, rental of apartments) should be reported as reconciliations per N.J.A.C. 8:31B-4 and N.J.A.C. 8:31B-4.131. Renovation of capital assets shall be distinguished from Repairs and Maintenance and capitalized with the asset according to the criteria described in N.J.A.C. 8:31B-4.20.

(b) The maintenance and repair of specialized equipment in areas such as Diagnostic Radiology, Therapeutic Radiology, or Laboratory sold be reported as costs in those cost centers. Bio-medical engineers should be treated in this manner.

(c) Functions include all maintenance of buildings and plant equipment including painting, maintenance of movable equipment to the extent done by institutional employees, and minor improvements and renovation of building and plant equipment.

8:31B-4.113 [(Reserved)] **Building and fixed equipment (BLD)**

Building and fixed equipment depreciation shall be reported in this cost center. This cost center also includes the costs of leasing and depreciation of building and building equipment; improvements to land, buildings and leaseholds; plant major and minor movable equipment not reported in other cost centers.

8:31B-4.114 [(Reserved)] **Physicians (PHY)**

(a) The Physicians cost center includes services directly or indirectly related to patient care such as: identifiable medical services by the physician which contribute to the diagnosis of the patient's condition or treatment, teaching, research conducted in conjunction with and as part of patient care (to the extent that such costs are not met by special research funds), administration, general supervision of technical personnel, laboratory quality control activities, committee work, performance of autopsies, and attending conferences as a part of the physicians' hospital service activities.

(b) The Physicians cost center includes the cost of hospital staff physicians, including the chief of staff, director of medical education, department chiefs and attending physicians and the cost of maintaining their offices. The cost of physician coverage in the

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outpatient cost centers and physicians who administer and/or conduct the functions of other ancillary cost centers described in this chapter should not be included in the physicians cost center.

8:31B-4.115 **Education and** Research [(RSH)[1]] **(EDR)**

(a) Function

1. This center administers, manages, and carries on research projects of the National Institutes of Health or other **projects approved by the NIH.** [projects approved by the Commission.] Approved research should be reported per [instructions in] N.J.A.C. 8:31B-4.62 through 4.66. Separate accounting should be maintained for each research activity in accordance with relevant contracts, grant agreements, or because of restrictions made on donations. Revenue received for research activities such as specific purpose grants should be recorded as reconciliations per [instructions in] N.J.A.C. 8:31B through 4.66. This center includes expenses related to fellowships.

2. Education includes the costs of formal educational programs for nursing and allied health, inservice education programs in the hospital or for extensive periods outside the hospital. Nursing and allied health education provides organized programs, approved by an organization which recognizes the professional status of health services educational programs at the national level, of nursing and medical related clinical education other than for physicians. Hospitals may either operate a school or provide the clinical training activities leading to the issuance of a degree by a college or university.

3. Included here are expenses related to the upkeep of student rooms and dormitories, except for the salaries of housekeeping, plant operations and laundry personnel, which should be charged to their respective cost centers. Related revenues such as tuition, grants and non-approved education costs and revenue should be reported per N.J.A.C. 8:31B-4.62 through 4.66.

4. Functions include selecting qualified students; providing education in theory and practice conforming to approved standards; maintaining student personnel records; counseling of students regarding professional, personal and educational problems; selecting faculty personnel, assigning and supervising students in giving medical or nursing care to selected patients; and administering aptitude and other tests for counseling and selection purposes.

[1]In order to simplify hospital reporting requirements and to allow both SHARE S.446 reporting requirements to be accommodated in one reporting format, the reporting requirements for this cost center have, in an amendment entitled Uniform Cost Reporting Regulation, been temporarily modified to allow the costs in this cost center to be reported to the Department of Health in the same manner specified in SHARE cost center definitions.]

8:31B-4.117 [Graduate Medical Education (GME)[1]] **Residents (RSD)**

(a) Function:

1. [Graduate Medical Education] **The residents cost center includes graduate medical education which** provides an organized program of graduate medical clinical education to interns and residents. To be approved, a medical residency training program must be approved by the Liaison Committee on Graduate Medical Education or, in the case of Osteopathic residencies, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association. Residency programs in the field of dentistry in a hospital must have the approval of the Council on Dental Education of the American Dental Association. Included here are expenses related to the office of the Director of Medical Education and the housing and board of residents. Non-approved education costs and revenue should be reported per [instructions in] N.J.A.C. 8:31B-4.62 through 4.66. Expenses associated with fellowships are to be included in the [Research (RSH)] **Education and Research (EDR)** center.

2. (No change.)

[1]In order to simplify hospital reporting requirements and to allow both SHARE and S.446 reporting requirements to be accommodated in one reporting format, the reporting requirements for this cost center have, in an amendment entitled Uniform Cost Reporting Regulation, been temporarily modified to allow the cost in this cost center to be reported to the Department of Health in the same manner specified in SHARE cost center definitions.]

8:31B-4.118 [General Administrative Services (GAM)[1]] **Administrative and General (A&G)**

(a) Function:

1. [General Administrative Services] **Administrative and General services** are those services associated with the overall direction and administration of the institution at all levels [that are not readily distinguishable between inpatient and outpatient]. Expenses and revenues directly associable with services not related to patient care ([e.g.] **for example**, data processing services sold to outside organizations, administrative personnel responsible for the operation of skilled nursing facilities, and other exclusions) should be reported as reconciliations per N.J.A.C. 8:31B-4.62 through 4.66. Detailed reporting of certain administrative services should be provided per N.J.A.C. 8:31B-4.131.

2. [General Administrative Services] **Administrative and General Services** include:

i.-vii. (No change.)

[vii.]**viii.** Management Engineering;

ix.-x. (No change.) ;

xi. [Data Processing] **Travel;**

xii. (No change.)

xiii. [Internal Audit] **Duplicating and Printing;**

xiv.-xxiii. (No change.)

[xxiv. Financial Administration;

xxv. Motor Pool;

xxvi. Travel.]

[1]In order to simplify hospital reporting requirements and to allow both SHARE and S.446 reporting requirements to be accommodated in one reporting format, the reporting requirements for this cost center have, in an amendment entitled Uniform Cost Reporting Regulation, been temporarily modified to allow the cost in this cost center to be reported to the Department of Health in the same manner specified in SHARE cost center definitions.]

8:31B-4.119 [Inpatient Administrative Services (IAM)[1]] **Fiscal (FIS)**

[Function: Inpatient Administrative Services are those primarily associated with the overall direction and administration of inpatient services provided in the institution. For example, the hospital admitting office would be assigned to Inpatient Administrative Services; rather than General Administrative Services. Detailed reporting of certain Administrative Services expenses should be provided per N.J.A.C. 8:31B-4, Part VI.]

Fiscal includes Admitting and Outpatient registration, cashiering (excluding cafeteria), patient billing and receivables (including outpatients), financial administration and controllership, data processing (as it relates to these functions), payroll, accounts payable, general ledger, budgets and reimbursement, fund accounting and internal audit.

[1]In order to simplify hospital reporting requirements and to allow both SHARE and S.446 reporting requirements to be accommodated in one reporting format, the reporting requirements for this cost center have, in an amendment entitled Uniform Cost Reporting Regulation, been temporarily modified to allow the cost in this cost center to be reported to the Department of Health in the same manner specified in SHARE cost center definitions.]

8:31B-4.125 [(Reserved)] **Interest (INT)**

The interest cost center includes the total cost of interest incurred by the institution. All interest costs related to the acquisition of institutional facilities should be reported as facilities interest. Working capital interest is reported as other expense in this cost center. Interest not applicable to services related to patient care (for example, rental of apartments) should be reported as reconciliations per N.J.A.C. 8:31B-4, Part IV and N.J.A.C. 8:31B-4.131.

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8:31B-4.126 [(Reserved)] **Legal Fringe Benefits (LFB)**

The Legal Fringe Benefits cost center should include the cost of all employee benefits required by law such as: FICA-OASDI, FICA-Medicare, worker's compensation, unemployment compensation and disability insurance.

8:31B-4.127 [(Reserved)] **Pensions (PEN)**

The Pensions cost center should include the cost of all pensions and annuity plans for hospital employees.

8:31B-4.128 [(Reserved)] **Policy Fringe Benefits (PFB)**

(a) The Policy and Fringe Benefits cost center should include the cost of all employee benefits granted by institution policy, excluding pension costs, such as: medical insurance, life insurance, other employee related insurance (excluding malpractice), deferred compensation, tuition reimbursement and other employee recognition programs.

(b) Employee Health Insurance includes all premium payments and associated costs with union or group health insurance for employees. Hospitals which self-insure for employees, health insurance should report no insurance costs in this cost center; however, deductions from operating revenue for personnel health programs are to be reported by cost center.

8:31B-4.129 [(Reserved)] **Reconciling Items (RIT)**

The Reconciling Items cost center should include the difference between total institutional costs from the hospitals' certified financial statements and the cost of services related to hospital patient care. The costs of services not related to patient care should also be reported as reconciliations per N.J.A.C. 8:31B-4 and N.J.A.C. 8:31B-4.131.

(a)

DIVISION OF HEALTH SYSTEMS ANALYSIS

Certificate of Need Policy Manual for Long-Term Care Services

"Window of Opportunity" Approach to Planning Long-Term Care Alternatives

Proposed Amendment: N.J.A.C. 8:33H-1.3

Authorized By: Len Fishman, Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1995-340.

Submit comments by July 5, 1995 to:

Anthony Kobylarz, Program Manager
Health Planning Development
New Jersey Department of Health
CN 360, Room 604
Trenton, NJ 08625

The agency proposal follows:

Summary

During the past two years, the Department of Health has undertaken a number of Statewide policy initiatives aimed at re-structuring the State's long-term care system to give consumers a greater choice of cost-effective home and community-based alternatives to nursing home care. This Statewide effort to create alternatives included the establishment of certificate of need review criteria for two new long-term care options which have been developed as part of this reform effort: assisted living residences and comprehensive personal care homes. These criteria were introduced within this chapter and became effective on November 23, 1992. The licensing standards for these health care facilities were concurrently proposed and approved and can be found in the Administrative Code at N.J.A.C. 8:36.

The Department of Health's original initiative in 1992 proposed amendments to N.J.A.C. 8:33H which reflected a new approach to planning, consistent with the goal of creating a better balanced long-term care system. This approach called for an 18-month "window of opportunity" allowing for the expedited certificate of need review of applications for assisted living residences and comprehensive personal care homes. It was thought that such a strategy would encourage the development of long-term care services which could substitute for nursing home placement.

The proposed amendment to N.J.A.C. 8:33H-1.3 at this time seeks to extend the "window of opportunity" for an additional 12 months to permit the Department to gain additional experience in the development of these alternatives and to expand reimbursement opportunities for their development. The Department is also proposing the elimination of the certificate of need requirement for assisted living residences and comprehensive personal care homes, which will require a legislative amendment to the Health Care Facilities Planning Act.

Social Impact

The proposed amendment would continue the Department's effort to facilitate the development of a more diverse array of high quality long-term care options, greater consumer choice, and an improved quality of life for those who need long-term care. While these rules will not lead to the creation of more in-home services, which are the most preferred form of care for the majority of disabled people, they will nonetheless address the pressing needs of those who are no longer capable of living in their own homes.

New Jersey's long-term care system continues to be skewed in favor of nursing home care, offering a limited range of alternatives. This is in part the result of past planning and certificate of need policies, which encouraged expansion of the nursing home bed supply but did little to foster the creation of other viable options. Thus, between 1983 and 1993, the Department of Health awarded certificate of need (CN) approval for the construction of 20,006 new nursing home beds. Currently there are 47,670 licensed long-term care facility beds (as of March 1, 1995), plus approximately 5,800 CN-approved but not yet licensed beds in New Jersey.

Assisted living residences will generally be newly constructed buildings that offer residents benefits which are presently unavailable in any other type of health care facility. A personally furnished, apartment-style living environment and a uniquely individualized approach to care are intended to promote residents' sense of autonomy, privacy, and self-esteem. The certificate of need review requirements will assure that applicants have a clear vision of what assisted living entails and that they are capable of implementing the concept in their projects. To date a total of seven assisted living residences have been approved during the first 14 months of the "window of opportunity." As of April, 1995, none of these facilities are operational.

Comprehensive personal care homes, on the other hand, are being created primarily through the voluntary conversion of existing residential health care facilities (RHCFs) and Class C boarding homes. Currently, there are approximately 11,000 RHCF beds and 4,800 Class C boarding home beds in the State. These facilities typically offer shared-occupancy rooms and a limited amount of personal care assistance; they are primarily occupied by the frail elderly and/or adults with mental illness problems. By electing to convert to a comprehensive personal care home (CPCH), the facility will be able to offer assisted living services, including nursing care, for residents who need it, without having to undertake costly physical plant modifications. To date, a total of four comprehensive personal care homes have been approved during the first 14 months of the "window of opportunity. At this time there are three existing licensed comprehensive personal care homes comprising a total of 248 beds.

Although CPHCs will not offer apartment units, as will be required for assisted living residences, they will nonetheless provide needed care based on the assisted living model. This represents a pragmatic use for a currently under-utilized health care resource (Statewide occupancy rates in RHCFs and Class C boarding homes have historically averaged about 70 percent and 60 percent, respectively). Because the comprehensive personal care home setting is viewed as more institutional and less homelike than the assisted living residence, new construciton of additional CPCHs are not encouraged under these provisions. Certificate of need requirements for CPCH have been framed accordingly, with exceptions to allow for small bed additions and the new construction of inpatient hospice facilities.

A highly beneficial feature of both new alternatives is the opportunity for residents to "age in place." To the greatest extent possible, residents in comprehensive personal care homes and assisted living residences should be able to receive additional services as their long-term care needs increase, without having to relocate to another facility or to a different room in the same facility. Thus, assisted living residences and comprehensive personal care homes are expected to serve a mix of people ranging from those who are fairly independent and high functioning to those with nursing home-level care needs.

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A thorough review of applicants' history of providing quality care will continue to be required as part of the certificate of need process. This screening will have a beneficial social impact in precluding the development of assisted living residences and comprehensive personal care homes by applicants with a poor licensing track record.

Certificate of need applicants for comprehensive personal care homes and assisted living residences should benefit from the extension of the "window of opportunity," during which they will continue to receive an expedited review. Their projects will not be subject to a need methodology and they will not have to compete to fill a specific need for placements in any particular county.

Given the Department's continued desire to stimulate development of the alternatives, and in view of the general uncertainty about how best to determine need for these new types of facilities, the expedited review process is deemed to be most appropriate at this time. The complexity of projecting need for comprehensive personal care homes and assisted living residences stems from the fact that many residents will age in place. A constantly changing number of each facility's residents will have health care needs of varying degrees; some people are likely to occupy rooms or apartments in these settings for years before they reach the point of requiring nursing home-level care provided by the facility.

The benefits of new long-term care alternatives will only be realized if people know how and when to access them. The Department of Health will continue to work with its advisory committees and other State agencies to educate the public about assisted living residences and comprehensive personal care homes, and to shape a well coordinated, efficient, easily accessible long-term care system in New Jersey. Furthermore, other alternatives such as assisted living programs in publicly subsidized senior housing and alternate family care programs will be proposed as they are developed by the Department.

Economic Impact

It is anticipated that the creation of lower cost alternatives to nursing home placement will benefit many consumers who seek more affordable options. Ultimately, the availability of comprehensive personal care homes and assisted living residences should also benefit the State with cost savings, if Medicaid is able to provide payment for these services as substitutes for nursing home care. The Department of Human Services' Division of Medical Assistance and Health Services has been well represented on all advisory groups working to develop long-term care alternatives, and their staff are anxious to assure access to these cost-effective options for the Medicaid-eligible population.

Without actual experience, it is difficult to know precisely how the cost of alternatives and nursing home care will compare. One recently constructed assisted living facility in another state offering a level of care similar to that proposed for New Jersey's assisted living residences charges $1,500 per month for a one bedroom apartment, plus $275.00 to $650.00 for board and care (1991 rates). Other providers have quoted all-inclusive monthly rates for assisted living in the $2,000 to $2,500 range. Because Comprehensive Personal Care Homes do not entail new construction and will not typically offer the amenities found in assisted living residences, it is expected that their rates will be lower. By contrast, private pay rates for nursing homes average over $3,000 per month.

Medicaid currently spends approximately $2,752 per month, or $33,024 per year, for nursing home care in New Jersey. This includes payment for the patient's room, board, and care, as well as reimbursement for the facility's capital costs. In paying for the alternatives, Medicaid will achieve a savings because it will reimburse only for the patient's personal care and health service costs; residents will be responsible for paying their own room and board charges in a comprehensive personal care home or assisted living residence. For example, then, low income individuals could use their Supplemental Security income to pay for their room and board, while Medicaid would pay for their personal care and health services.

The proposed amendment is expected to have a beneficial impact on the New Jersey economy. The continued development of the assisted living industry that will continue to be encouraged by the amendments to these rules and N.J.A.C. 8:36 will continue to spur the creation of many jobs for those who will design, construct, operate, and staff assisted living residences throughout New Jersey. Comprehensive personal care homes will most likely need to hire additional nursing and personal care staff, increasing job opportunities in these settings.

Executive Order No. 27 Statement

The proposed amendment to N.J.A.C. 8:33H-1.3 provides a 12-month extension to the "window of opportunity" on assisted living residences and comprehensive personal care homes in New Jersey, for which there are no Federal regulatory requirements. Under Medicaid rules, N.J.A.C. 10:63-2, nursing home care is considered an entitlement, while long term care alternatives are optional services.

Regulatory Flexibility Analysis

Certificate of need applicants that will be affected by the amendment may include some small businesses that employ fewer than 100 persons, such as real estate development companies, small residential health care facilities, or consulting firms. However, the proposed amendment does not impose any additional recordkeeping, reporting, or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment extends for 12 months the existing window of opportunity for CN applications under N.J.A.C. 8:33H-1.3. In order to assure the orderly development of long-term care services in the State, the proposed amendment shall apply to all certificate of need applicants for the long-term care services referenced in this chapter.

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

8:33H-1.3 "Window of opportunity" approach to planning long-term care alternatives

(a) Notwithstanding other provisions of this chapter, and in the interest of stimulating the development of new long-term care alternatives, the Department of Health hereby effectuates [an 18-] **a 30** month "window of opportunity," during which applicants for assisted living residences and comprehensive personal care homes may file a Certificate of Need application which shall receive an expedited review. Applications submitted during this time shall be reviewed in accordance with the pertinent requirements set forth in this chapter, but shall not be subject to a need methodology.

1. The "window of opportunity" shall commence on December 20, 1993.

2. Prior to the conclusion of the [18] **30** month "window of opportunity," the Department shall propose a new need methodology for all long-term care services and new criteria for a full competitive Certificate of Need review process for assisted living residences and comprehensive personal care homes. Effective [June 20, 1995] **June 20, 1996**, the expedited review process for these facilities will no longer be available.

3. (No change.)

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Standards for Licensure of Long-Term Care Facilities

Nurse Aide in Long-Term Care Facilities Training and Competency Evaluation Program

Fees

Proposed Amendment: N.J.A.C. 8:39-43.1

Authorized By: Len Fishman, Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 16:2H-5.

Proposal Number: PRN 1995-337.

Submit comments by July 5, 1995 to:
Robert J. Fogg, J.D., M.P.A.
Director, Licensing, Certification and Standards
Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

Subchapter 43 of the Standards for Licensure of Long-Term Care Facilities, N.J.A.C. 8:39, contains standards for the nurse aide in long-term care facilities competency evaluation program, including the following: fees, nurse aide

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employment and functions, procedures for approval of training programs, information concerning the curriculum, responsibilities of the administrator, qualifications and responsibilities of program instructors, student records and attendance, evaluation of the training program, information and application procedures for the competency examination, and waivers. The subchapter also addresses nurse aide certificates, revocation of certificates, recertification, the nurse aide registry, hearings, equivalency of certificates received in other states, expiration of certification, and employment of a nurse aide.

The Department is proposing to amend N.J.A.C. 8:39-43.1(a) and (e) so as to remove the current fee schedule from regulation. While the Department of Health maintains responsibility for overall direction of the competency evaluation program for the certified nurse aide (CNA), the administration, reporting, and recording of the testing process are maintained by Assessment Systems, Inc. (ASI), which determines the fees for the several testing components, within the parameters of the existing contract with the Department. The Department is currently in the fourth year of a five-year professional services contract with ASI. ASI has notified the Department that it is exercising its option to adjust the price for the competency evaluation program upwards to a maximum based upon the Consumer Price Index (CPI), U.S. City average, for March 1994 and March 1995, using the most currently available figures. The current fee for the skills component of the competency evaluation is $15.00 and the fee for the ExPro (written/oral) examination is $55.00. The proposed fees for the skills examination and the written examination, based on a 2.5 percent CPI for March of 1994 and a 2.5 percent CPI for January of 1995, are $16.00 and $58.00, respectively.

In addition, ASI has requested an increase in the fee for the biennial recertification for the CNA. In response to a request from the Department, and with the support of various advisory bodies representing LTC facilities consulted by the Department, ASI is proposing to establish a walk-in, recertification procedure, beginning November 1995 at various geographical sites throughout the State. A laminated picture recertification card will be issued to each applicant for recertification, providing each aide, as well as their employers, a means to promptly and accurately confirm that the certificate presented is accurate and valid. The Department and long-term care facilities have been confronted with a substantial number of cases of fraudulent certificates.

The cost of the walk-in photo identification process for recertification will be $30.00. The current recertification process, which is slower and less sophisticated than that proposed, involves a cost of $16.50 per applicant. All of the other features of the recertification process performed by ASI under conditions of the existing contract will continue. All other fees in effect at this time will remain the same. Future changes in any of the nurse aide competency testing fees covered under contract with the current or another testing agency or professional examination service will be placed in the New Jersey Register, Public Notice section, in a timely manner.

An amendment is also proposed at N.J.A.C. 8:39-43.1(e), changing the wording from "All fees listed in (a) above are non-refundable" to the following: "All fees referenced at (a) above are non-refundable," since most fees will no longer be listed in the rule.

Social Impact

Federal and State mandates require a State-approved training and testing program for certified nurse aides providing care in licensed long-term care facilities and a biennial recertification process. Given the requirements for an approved training and testing program for the certification of nurse aides, and also the provisions of the existing contract with ASI, the Department recognizes ASI's option to invoke a price change based on the Consumer Price Index for contracted services currently being provided. Additionally, the proposed amendments will provide for a more efficient system of recertifying the more than 50,000 nurse aides currently holding New Jersey certification. A lapse of certification would prevent the nurse aide from working in a nursing home and providing much needed services to the frail and elderly residents, with a resultant negative impact on resident care. Gainful employment would cease for the nurse aide without a current certification, and the aide may eventually be required to re-test for certification at an increased cost to the system. Moreover, the Department has been requested by various long-term care industry advisory groups to move forward with the implementation of this procedure whereby laminated picture certification cards will be issued to eligible applicants. This is a major step forward in eventually having all certified nurse aides in New Jersey in possession of a picture certification as proof of identity. New Jersey would be the first state in the country in which this were so. Furthermore, the Department expects the incidence of falsified certification to markedly decrease, thereby preventing untrained and unqualified nurse aides from working in the nursing home and adding a layer of protection for a vulnerable population.

Economic Impact

The proposed new fee will have an economic impact upon applicants for certification as nurse aides and all long-term care facilities. The proposed amendments will also impact all certified nurse aides who are unemployed at the time of biennial recertification or employed in a facility other than a long-term care facility where the employer is not required by Federal or state regulation to bear the cost of recertification. Approximately 600 skills tests and 475 written/oral tests for certification are performed each month. This fee change would result in an increased cost for the testing process of approximately $2,000 per month. The cost for recertification will increase from $16.50 to $30.00. At approximately 800 recertifications monthly, this would result in an increase in cost of approximately $10,800 per month. Since Federal and State regulations prohibit the cost of the training and competency evaluation programs from being paid by the nurse aide, the majority of this increased cost will fall to the facilities.

Executive Order No. 27 Statement

The Omnibus Reconciliation Acts (OBRA) of 1987, 1989, and 1990 mandate competency evaluations of nurse aides employed or seeking employment in long-term care facilities. The Health Care Financing Administration (HCFA) is responsible for the promulgation and adoption of the regulations to implement the OBRA legislation. Final rules and regulations were published by HCFA on September 26, 1991.

Specifically, 42 CFR 483 amends the Medicare and Medicaid regulations pertaining to facilities to incorporate Federal requirements that states have training and competency evaluation programs for nurse aides employed by Medicare-participating skilled nursing facilities and Medicaid-participating nursing facilities and also have a nurse aide registry. In addition, Federal rules prohibit approval of programs that charge nurse aides for training, course materials, testing or recertification.

Analogous State licensing rules found at N.J.A.C. 8:39-43 do not exceed Federal rules. The proposed amendments to subchapter 43 of the licensing standards for long-term care facilities would delete from regulation the specificity of the amount charged for the testing and recertification process for the certified nurse aide. This is necessary since this charge is determined by the testing service in accordance with its contract with the Department. The proposed amendment would allow for a testing fee and recertification fee equal to those charged by the testing company. The proposed amendment would be no more burdensome than Federal regulations to the citizens of New Jersey, since currently there are no limitations imposed by the Federal regulation as to training and testing program costs or biennial recertification costs.

Regulatory Flexibility Analysis

Approximately half of New Jersey's 355 long-term care facilities may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment allows for a change of fee based on testing and recertification costs, as determined by contract with an independent testing agency. The cost of the certification process for the nurse aide is borne by the facility, and thus this amendment would affect small businesses, though to a proportionately lesser degree than it would affect larger facilities. However, the recordkeeping and reporting requirements already placed upon small businesses by the current rules should not change, inasmuch as each facility currently has its recording and reporting systems in place and functioning.

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

8:39-43.1 Fees

(a) [The following fees] **Fees** shall be charged **by the testing agency** to the long-term care facility training program, for each person for whom training and evaluation is sought, **in the amount specified** by the [Department or its subcontract] **testing** agency for the following, in accordance with N.J.S.A. 26:2H-12, except as noted **in (b)** below:

1. Clinical skills and written examination;[: $70.00]
2. Clinical skills and oral examination;[: $80.00]
3. Clinical skills examination only;[: $15.00]
4. Written examination only;[: $55.00]
5. Oral examination;[: $65.00]
6. Duplicate or equivalency certificate, which shall be charged to the individual; **and**[: $15.00]

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7. Recertification certificate, which shall be charged to the individual if the individual is neither currently employed nor has been offered employment by a long-term care facility[: $16.50].

[8. Two-year] **(b) The fee charged by the Department for** approval of a training program[:] **shall be** $75.00.

(c) The Department shall provide timely notice of any changes in fees specified in (a) above in the Public Notices section of the New Jersey Register.

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

[(e)]**(g)** All fees [listed in] **referenced at** (a) **and (b)** above are non-refundable.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Determination of Eligibility

Proposed Readoption with Amendments: N.J.A.C. 10:46

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

Authority: N.J.S.A. 30:4-23; 30:4-25.2 and 30:6D-23 et seq.

Proposal Number: PRN 1995-335.

Submit comments by July 5, 1995 to:
James M. Evanochko
Administrative Practice Officer
CN 726
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department adopted eligibility criteria for services from the Division of Developmental Disabilities on September 17, 1990. Pursuant to Executive Order No. 66(1978), the chapter containing those criteria, N.J.A.C. 10:46, is scheduled to expire September 17, 1995. The Department has reviewed those rules and found them reasonable and necessary for their purposes, and proposes to readopt them with amendments.

The rules establish eligibility criteria for services under the Division of Developmental Disabilities and to establish the process for determining if those criteria are met. In 1985, N.J.S.A. 30:6D-23 et seq. changed the name of the New Jersey Division of Mental Retardation to the New Jersey Division of Developmental Disabilities. The act charged the Division with the responsibility to develop eligibility criteria.

In order to be determined eligible, an individual must have a severe and chronic disability attributable to a mental and or physical impairment. That disability must be manifested before age 22 and must result in substantial limitation in three or more of the following major life areas: self care, receptive and expressive language, learning, mobility, self direction and capacity for independent living or economic self sufficiency.

The rules clarify that the mental or physical impairment cannot be based upon a mental illness. Mental illness is defined according to N.J.S.A. 30:4-27.1 et seq. Persons who are found to be eligible but have a mental illness may receive services while being treated for that mental illness.

The person on whose behalf application is made must be a resident of New Jersey. The person must need services at the time of application.

N.J.A.C. 10:46 is proposed for readoption with minimal changes. Wording has been added to the definition of "developmental disabilities" to clarify that the substantial functional limitation must be present before age 22. The Division has encountered several persons who have applied for services who have a condition diagnosed prior to age 22. The condition does not, however, result in a substantial functional limitation until some time after age 22, often much later in life.

N.J.A.C. 19:46-1.3 currently defines "mental or physical impairment" together. The amended rule provides separate definitions.

Wording has been changed in the definition of "resident" to clarify that the individual must express an intention to have his or her primary residence in New Jersey. The previous definition required that the individual already be present in New Jersey but have no intention of moving. To state the requirement more affirmatively should assist the Division in the determination of residence.

A new requirement has been added under N.J.A.C. 10:46-2.1, General eligibility, to clarify that persons who claim mental retardation as their disability shall have an IQ score below 70. This has been added since the recent revision of the Diagnostic and Statistical Manual, Fourth Edition (DSM-IV) of the American Psychiatric Association indicates that mental retardation may, in some cases, be diagnosed with an IQ score up to 75. The Division feels that the criteria in the DSM-IV for accepting an IQ score between 70 and 75 is not sufficiently clear to ensure consistent diagnosis among professionals. Therefore, the previously established criteria of an IQ below 70 is included as the Division's requirement for establishing a diagnosis of mental retardation.

The new location of the Division's Southern Regional Office is included in N.J.A.C. 10:46-3.2. In addition, wording has been added to clarify how an applicant may seek a transfer using the Interstate Compact on Mental Health (N.J.S.A. 30:7B-1 et seq.)

The eligibility process has been simplified by indicating that it is not necessary, in every instance, to have the recommendation of the intake worker reviewed by a team of professionals. Finally, wording has been added to the appeals section to indicate the petitioner has the burden of proof in an appeal.

Subchapter 1, General provisions, contains three sections: purpose and authority; scope of the chapter; and definitions of terms used in the chapter.

Subchapter 2, Eligibility Criteria, contains specific guidelines used in determining eligibility. Subchapter 3, Application, contains application procedures. Subchapter 4, Determination Process, describes how a determination regarding eligibility is made and what notice procedures are required.

Social Impact

The rules proposed for readoption with amendments will benefit that group of individuals who apply to the Division for services and their families in that the criteria for eligibility are clearly established. The rules also describe in detail the process a determination of eligibility will follow.

The services include: residential services in developmental centers, private residential facilities, group homes, skill development homes and other alternate living services; adult training; case management and referral services; and guardianship services. Such services may, for example, enable eligible individuals to improve their skills in a variety of areas, such as self help, communication, employment and social skills and to maintain or improve their health and physical functioning. At the present time, the Division serves approximately 14,000 individuals. There is currently a waiting list of approximately 4,000 persons for day or residential programs.

Economic Impact

The rule proposed for readoption with amendments will affect the Division by providing a means to determine who is eligible for services. The Division's appropriation for Fiscal Year 1995 is approximately $650 million. The Division does not charge families for services rendered.

Executive Order No. 27 Statement

The rules governing eligibility determination have no provisions controlled or regulated by any Federal requirements. Therefore, an Executive Order No. 27 analysis is not required.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, regulatory flexibility anlysis is not required. The rules provide criteria for eligibility for service to individuals from the Division of Developmental Disabilities.

Full text of the rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:46.

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

10:46-1.3 Definitions

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

. . .

"Developmental disability" means a severe chronic disability of a person which:

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1.-3. (No change .)

4. Results in substantial functional limitations **before the age of 22** in three or more of the following areas of major life actively, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self sufficiency; and

5. (No change.)

6. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairment where the above criteria are met. [(N.J.S.A. 30:6D-25.)]

. . .

"Mental [or physical] impairment" means impairment in cognitive, neurological, sensory **or** cerebral [or motor] functioning resulting from other than mental illness.

"Physical impairment" means an impairment in motor functioning resulting from other than mental illness.

"Resident" means a person who is a domiciliary of New Jersey for other than a temporary purpose and who [has no present intention of moving from the State] **has expressed an intention to have his or her primary residence in the state.**

. . .

10:46-2.1 General eligibility

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

(e) For applicants who present documentation of mental retardation, the criteria for establishing the presence of mental retardation shall be an IQ score of less than 70, demonstrated as follows:

1. The person has an IQ score of 60 to 69; and

i. There is an impairment in adaptive behavior; and/or

ii. There is a chronic medical problem; and/or

iii. There is an impairment in behavioral, sensory or motor function and in the ability to perform basic skills; or

2. The person has an IQ score of 59 or below.

10:46-2.3 Services

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

(e) For applicants who apply for Family Support, the requirements of N.J.A.C. 10:46A shall apply.

10:46-3.1 Who may apply

(a) (No change.)

(b) For applicants who apply for Family Support, the requirements of N.J.A.C. 10:46B shall apply.

10:46-3.2 Where to apply

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

(d) Applications shall be made to a regional office of the Division. Forms and instructions may be obtained by writing **to** or calling [to]:

Regional Office:	Counties of Jurisdiction:
Northern Regional Office 201-927-2600 1B Laurel Drive Flanders, NJ 07836	Sussex, Morris, Warren, Passaic, Bergen, Hudson
Upper Central Reg. Office 201-379-1700 65 Springfield Avenue Springfield, NJ 07081	Essex, Somerset, Union
Lower Central Reg. Office 609-292-4500 222 S. Warren St. Trenton, NJ 08625	Middlesex, Monmouth, Mercer, Ocean, Hunterdon
Southern Regional Office 609-751-0240 [Heritage Plaza 1873 Route 70 Cherry Hill, NJ 08003] **101 Haddon Ave.** **Suite 17** **Camden, NJ 08103-1485** (609) 757-4700	Camden, Atlantic, Gloucester, Cumberland, Salem, Cape May, Burlington

(e) **If the person for whom eligibility is sought does not live in New Jersey at the time of the application, the applicant shall indicate if they presently receive services from a state agency in the state where the individual resides.** To apply for services from the State of New Jersey under the Interstate Compact on Mental Health (N.J.S.A. 30:7B-1 et seq), the request shall be sent to the [Assistant Director for Residential Services] **Administrative Practice Officer**, Division of Developmental Disabilities, CN 726, Trenton, New Jersey 08625. The request shall be forwarded to the appropriate regional office for a determination of eligibility. All information required in N.J.A.C. 10:46-3.3 shall be provided. All notice requirements contained in N.J.A.C. 10:46-4.2 shall be followed.

10:46-4.1 Determination

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

(d) A team [shall] **may, at the request of the intake worker or his or her supervisor,** review the recommendation of the intake worker and:

1.-2. (No change.)

10:46-4.2 Notice requirements

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

(c) If the applicant is determined eligible, Division staff shall notify the applicant in writing within 10 days of the determination and such notice shall include information regarding the service(s) deemed most suitable by the team.

1. If the most appropriate service as determined by the team is not immediately available, the Division shall provide an alternate service. [(N.J.S.A. 30:25-6.)]

2. The Division shall also place the eligible persons name on a waiting list [for the service(s) deemed most suitable by the professional team pending its availability] **in accordance with N.J.A.C. 10:46C.**

(d) If the individual is determined ineligible, the Division shall notify the applicant in writing within 10 working days of the determination. Such notification shall include specific criteria that were not met by the applicant, and shall also include information regarding the applicant's right to appeal the determination pursuant to N.J.A.C. 10:48-1. **The petitioner shall bear the burden of proof and the burden of persuasion.**

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Certified Nurse Practitioner/Clinical Nurse Specialist Proposed New Rules: N.J.A.C. 10:58A

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

Authority: N.J.S.A. 45:11-23 et al.; N.J.A.C. 13:37; P.L. 1991, c.377; N.J.S.A. 30:4D-6b(17), 7a, b and c; 30:4D-12; 1905(a)21 of the Social Security Act, 42 U.S.C. 1396d(a).

Agency Control Number: 95-P-16.

Proposal Number: PRN 1995-349.

Submit comments by July 5, 1995 to:

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Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, N.J. 08625-0712

The agency proposal follows:

Summary

In December, 1991, the New Jersey State Legislature enacted P.L. 1991, c.377, which defined "nurse practitioner," "clinical nurse specialist" and "nurse practitioner/clinical nurse specialist" to designate professionals who are qualified to practice nursing to include "diagnosing and treating human responses to actual or potential physical and emotional health problems" within the scope of the nursing profession, yet "distinct from a medical diagnosis."

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Accordingly, the Division of Medical Assistance and Health Services (the Division) is proposing new rules, N.J.A.C. 10:58A, Certified Nurse Practitioner/Clinical Nurse Specialist Services, to enable certified nurse practitioners (CNPs) and clinical nurse specialists (CNSs) to provide, within the scope of nursing practice, primary health care services for Medicaid-eligible individuals.

The focus of the new rules is not to define or to enforce professional qualifications for these health care practitioners: that lies within the scope of the statute described above, and of the provisions for the licensing of CNP/CNSs set forth at N.J.A.C. 13:37. Rather, the purpose of these rules is to define the process by which qualified professionals will become providers of health services to the Medicaid population, and how they will function within the Medicaid program to render medically necessary services and be reimbursed for those services.

Federal regulations effective May 22, 1995, affect several of the provisions of this rule, in changes to: (1) State specification of the qualifications for advanced practice nurses, as well as for certified pediatric nurse practitioner and certified family practice nurse practitioner, (2) availability of CNP/CNS services to categorically needy, medically needy and other eligibility groups, and (3) the prescribing of therapy services by licensed practitioners. Of these new provisions relating to CNP/CNSs, the Division is incorporating the Federally modified qualifications for the pediatric nurse practitioner and the family practice nurse practitioner. The remaining features of the new Federal regulations are under study within the Division, and will be proposed as amendments to the CNP/CNS manual at a later date.

The chapter consists of four subchapters, Subchapter 1, General Provisions, describing how certified nurse practitioners and clinical nurse specialists become Medicaid and HealthStart providers; Subchapter 2, Provision of Services, setting forth policy defining Medicaid services; Subchapter 3, HealthStart, defining the clientele and the available services through the program; and Subchapter 4, HCFA Common Procedure Coding System (HCPCS), explaining how the HCPCS procedure codes are used to describe health services rendered, in the submission of claims and the Medicaid reimbursement rate for these services. The Fiscal Agent Billing Supplement constitutes an appendix to the rule, although it is not reproduced in the New Jersey Administrative Code.

A description of the specific new rules follows.

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 10:58A-1.1 Introduction; Certified nurse practitioner and clinical nurse specialist

The section provides that certified nurse practitioners and clinical nurse specialists (CNP/CNSs) may provide medically necessary covered services as defined by the Board of Nursing, and that the Medicaid program may reimburse these nurse practitioners and clinical nurse specialists. The section also references the statute and regulations governing these services.

N.J.A.C. 10:58A-1.2 Definitions

The section defines CNP/CNSs as a new type of Medicaid provider, specifies such types of health care as Early and Periodic Screening, Diagnosis and Treatment (EPSDT) and HealthStart, mental health services and Pre-Admission Screening and Annual Resident Review (PAS/ARR), and defines several medical procedures, such as concurrent care and consultation.

N.J.A.C. 10:58A-1.3 Provisions for provider participation

The section describes how a certified nurse practitioner or a clinical nurse specialist becomes approved as a Medicaid practitioner: which forms are to be submitted, and to whom. The section also addresses the procedure to become a HealthStart provider, including the submission of specific forms and credentials.

N.J.A.C. 10:58A-1.4 Recordkeeping

This section describes what documentation providers are required to maintain to support services rendered. This section sets forth the required elements of documentation, such as the date of service, the patient's name, the reasons the patient needed treatment, the practitioner's findings. Office visits are reimbursed at differing rates: the section provides a basic statement about the kinds of records which providers are expected to maintain to substantiate each type of procedure.

N.J.A.C. 10:58A-1.5 Basis of reimbursement

Nurse practitioners and clinical nurse specialists will be reimbursed through two billing mechanisms: either as an independent practitioner submitting claims for her or his services, or as an employee of another Medicaid provider, such as a hospital, a nursing home, a shared health care facility or a group of physicians and/or other practitioners. The section discusses concurrent care and consultations (nurse practitioners are not reimbursed for consultations, but their patients may require consultation services). When Medicaid practitioners treat Medicaid patients through health facilities or professional groups, claim forms must clearly identify the individual who has personally rendered each service.

SUBCHAPTER 2. PROVISION OF SERVICES

N.J.A.C. 10:58A-2.1 General provisions

The intention of the New Jersey Medicaid programs is that health services are only reimbursable when they conform to program specifications. As stated in this section, one of the Medicaid requirements is that patients be currently eligible at the time services are rendered, and that the CNP/CNS is responsible to verify the patient's eligibility prior to providing services.

N.J.A.C. 10:58A-2.2 Advanced practice nursing services

The section provides references to the procedure codes within the CNP/CNS's scope of practice, both in connection with management of health complaints (conditions and symptoms) and with preventive medicine.

N.J.A.C. 10:58A-2.3 Surgical procedures

The section introduces the concept of surgical procedures which are reimbursed in combination with other procedures, for example, certain office visits, and those surgical procedures or office visits which are not reimbursed in combination with other procedures.

N.J.A.C. 10:58A-2.4 Prescribing

Citations to rules defining prescribing by CNP/CNSs are given in the section. The Medicaid Pharmaceutical Services manual, N.J.A.C. 10:51, is referenced as giving the specifics for prescribing within Medicaid practice. Amendment of N.J.A.C. 10:51 to specify CNP/CNSs as prescribers is scheduled imminently.

N.J.A.C. 10:58A-2.5 Clinical laboratory services

Federal regulations, the Clinical Laboratory Improvement Amendments (CLIA) of 1988, and N.J.A.C. 10:61, The Independent Clinic Services manual, specify laboratory practice and qualifications within New Jersey Medicaid. The section discusses requirements for the practitioner who refers specimens to a clinical laboratory and/or who performs testing within her or his own office.

N.J.A.C. 10:58A-2.6 Evaluation and management services HCPCS codes

The section describes office visit procedures, and specifies the conditions which must be met in order to bill for initial visits, whether in the practitioner's office, a hospital or other health facility. This section also describes preventive medicine services for children including EPSDT examinations and HealthStart services, and for adults, the annual health maintenance examination. Information about consultations is given for those instances where the CNP/CNS's patients require evaluation from another level of expertise.

N.J.A.C. 10:58A-2.7 Family planning services

The section lists available family planning services, and discusses requirements related to the Norplant system.

N.J.A.C. 10:58A-2.8 Mental health services

CNP/CNSs who are certified in the advanced practice category of psychiatric/mental health are qualified to perform and be reimbursed for psychiatric evaluations for New Jersey Medicaid. The section specifies the elements of the required recordkeeping, discusses prior authorization, and lists the services which fall within the scope of the CNP/CNS.

N.J.A.C. 10:58A-2.9 Pre-admission screening (PAS) and annual resident review (ARR)

The evaluations described in this section relate to candidates for admission to a nursing facility (PAS) and annual review of nursing facility residents (ARR), in order to assess the appropriateness of the individual for admission or retention in the facility. As indicated, if the individual shows signs of mental retardation or mental illness, he or she is further evaluated to determine whether specialized services are needed. The section describes the performance of these reviews, including

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reviews for persons diagnosed with Alzheimer's syndrome or similar conditions, as well as specifying the requirements for successive annual reviews.

N.J.A.C. 10:58A-2.10 Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)

EPSDT is a Federally-mandated child health program for Medicaid recipients from birth through 20 years of age. The section specifies the components of the EPSDT examinations and reimbursement policy for the examinations.

SUBCHAPTER 3. HEALTHSTART

N.J.A.C. 10:58A-3.1 HealthStart; comprehensive maternity and pediatric care services

This section describes the HealthStart programs for Medicaid eligible persons which provide comprehensive maternity services for pregnant women, including those determined to be presumptively eligible, and child health care services for children through two years of age.

N.J.A.C. 10:58A-3.2 Purpose

The section indicates that HealthStart is an expansion of the maternal health services and EPSDT which provides enhanced services to two vulnerable groups within the Medicaid population.

N.J.A.C. 10:58A-3.3 Scope of services

The HealthStart maternity care services rendered by CNP/CNSs are those within the program of health support services. HealthStart pediatric care services include up to nine preventive visits, all the recommended immunizations, the provision for sick care, and referral and follow-up for extensive health needs.

N.J.A.C. 10:58A-3.4 HealthStart provider participation criteria

The section lists the Medicaid-enrolled provider types eligible to participate as HealthStart providers, describes the process of enrolling as a HealthStart provider, specifies the criteria for functioning within the HealthStart program and provides the addresses for obtaining appropriate application forms.

N.J.A.C. 10:58A-3.5 Termination of HealthStart provider certificate

This section indicates that if a HealthStart provider fails to comply with HealthStart standards, fails to complete the recertification process by the deadline, or voluntarily withdraws from HealthStart, the New Jersey State Department of Health will terminate the HealthStart Provider Certificate.

N.J.A.C. 10:58A-3.6 Records; documentation, confidentiality and informed consent for HealthStart maternity care providers

The section discusses patient confidentiality, informed consent, and the documentation of health support services.

N.J.A.C. 10:58A-3.7 Health support services

This section describes Health Support Services. HealthStart provides the following health support services, both during and subsequent to the pregnancy: case coordination services, nutrition assessment and basic guidance services, social-psychological assessment and basic guidance services, health education assessment and instruction, and one face-to-face preventive health care contact.

N.J.A.C. 10:58A-3.8 Standards for HealthStart pediatric care certificate

This section indicates that in order to provide comprehensive, integrated and coordinated pediatric care services, pediatric care providers are expected to provide preventive child health care, maintain the patient history, provide or arrange for non-emergency room care with 24-hour access, and provide or arrange for sick care and emergency care.

N.J.A.C. 10:58A-3.9 Professional requirements for HealthStart pediatric care providers

HealthStart pediatric care providers shall be primary care providers who possess a knowledge of pediatrics.

N.J.A.C. 10:58A-3.10 Preventive care services by HealthStart pediatric care providers

The section outlines the schedule of preventive health visits and the criteria for these visits. The requirements for sick care and 24 hour telephone access are defined. Case coordination, outreach and follow-up services are described, to assure that children receive ongoing care.

N.J.A.C. 10:58A-3.11 Referral services by HealthStart pediatric care providers

HealthStart pediatric care providers are required to provide for consultations: medical, psychological, educational and nutritional.

N.J.A.C. 10:58A-3.12 Records; documentation, confidentiality and informed consent for HealthStart pediatric care providers

The program's requirements for patient confidentiality, informed consent and documentation of services are described in the section.

N.J.A.C. 10:58A-3.13 HealthStart services; billing procedure

Billing procedures for CNP/CNSs providing preventive care are described, including the use of the child's age-appropriate procedure codes. The elements of the preventive care visits are also listed.

SUBCHAPTER 4. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

N.J.A.C. 10:58A-4.1 Introduction to the HCPCS procedure code system

The section describes the HCPCS procedure code system, and defines the three levels of HCPCS codes. Certain HCPCS codes have modifiers and indicators which specify particular aspects of the service rendered to the Medicaid patient, thus assuring more precise reimbursement for Medicaid services.

N.J.A.C. 10:58A-4.2 HCPCS procedure code numbers and maximum fee allowance schedule (Level I)

These procedure codes are based on the Physicians' Current Procedure Terminology—4th Edition. This section provides the fee schedule for the procedures, listed by procedure code and grouped according to type of service.

N.J.A.C. 10:58A-4.3 HCPCS procedure codes and maximum fee allowance schedule for Level II codes and narratives

This level of procedure codes covers procedures for which HCFA has assigned the code, and provides the fee schedules for these codes.

N.J.A.C. 10:58A-4.4 HCPCS procedure codes and maximum fee allowance schedule for Level III codes and narratives

Level III procedure codes are specific to the New Jersey Medicaid program, and have been assigned by the program. The procedures are defined in this section, and the fees are given here.

N.J.A.C. 10:58A-4.5 HCPCS procedure codes; qualifiers

HCPCS procedure codes frequently have, in addition to the indicators and modifiers described at N.J.A.C. 10:58A-4.1, qualifiers associated with the codes. Qualifiers differ from the other specifications in that they express policy concerning the procedure; they may express limitations associated with the particular procedure, such as: "This code applies only to newborns . . ."; they may set forth requirements, such as: "This code requires, for reimbursement purposes, a minimum of . . ."; and they may note preclusions, such as: "Visit during a single admission will be disallowed to the same practitioner . . .".

N.J.A.C. 10:58A Appendix

An essential part of this chapter, in its function as a manual for practitioners, is the Fiscal Agent Billing Supplement, which is referenced but not reproduced in the New Jersey Administrative Code. Two addresses are given in the Appendix to enable interested persons to obtain a copy of the Supplement.

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Social Impact

These proposed new rules will impact upon recipients by increasing availability of primary care services which can now be provided by CNS/CNs. Currently, the State Board of Nursing has certified 4,961 individuals in the CNS category, and 4,801 individuals in the NP category. Interest in obtaining these certifications is expected to continue. The proposed new rules will also allow Medicaid recipients to access health care providers that are now available to the non-Medicaid community. The NP/CNS providers will be able to serve all categorically needy Medicaid beneficiaries, in accordance with the provisions of this chapter.

Economic Impact

Because Medicaid recipients do not pay for medical services, they will experience no economic impact due to the rules.

Medicaid providers will be paid according to the procedure codes within the chapter. CNP/CNS providers will probably experience a positive economic impact because they will now be able to bill Medicaid directly for services rendered in accordance with this chapter. Physicians may experience a reduction in the number of clients served as a result of CNP/CNS services which will now be available to those clients, and the reduction may affect the physicians economically.

The Division is unable to estimate the economic impact of this new provider group upon the Medicaid program. Although the Division is unable to estimate the number of practitioners who may enroll in the Medicaid program or the number of Medicaid recipients who will access these services, increased access to primary and preventive care should decrease the need for more costly episodic or acute care currently provided in emergency rooms or inpatient hospital beds.

Executive Order No. 27 Statement

The provisions of the new rules are not in excess of Federal regulations. Under Federal law, state Medicaid programs must offer pediatric nurse practitioner and family nurse practitioner services to the extent that the practitioner is legally authorized to perform them under state law or regulations. The rules contain standards which are the same as Federal standards and requirements in the following areas:

Topic	Citation
Early and Periodic Screening, Diagnosis and Testing (EPSDT):	1905(r) of the Social Security Act; 42 U.S.C.1396d(r).
HealthStart:	For Pediatric HealthStart: Federal standards for EPSDT, as described above, have defined this State program. For Maternal HealthStart: Section 1902(b) of the Social Security Act provides for enhanced medical, and other, services for pregnant women.
Pediatric nurse practitioner, and Family nurse practitioner:	HCFA State Medicaid Manual, Section 4415
Quality assurance:	42 C.F.R. 434.

Regulatory Flexibility Analysis

Because a certified nurse practitioner or a clinical nurse specialist practicing independently will constitute a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, a Regulatory Flexibility Analysis is being provided as follows:

The rules provide for the delivery of health care services to eligible persons. State and Federal laws provide for certification and approval of this provider category, and specify that the provider of health services maintain records of services provided to individuals. Providers are required by law to maintain sufficient records to fully document the name of the patient being treated, dates and nature of services, plan of treatment and medications, etc. In addition, the Federal government requires of State Medicaid programs the provision of various reports concerning the administration of public funds. These requirements apply equally to all providers participating in the New Jersey Medicaid program. Consequently, the Division is not authorized to exempt a provider, whether or not the provider is a small business, from the documentation and reporting to the Medicaid agency of any services provided to Medicaid eligible persons.

A Medicaid provider may find it preferable to engage the services of a professional firm to handle its accounting, billing, or data services, or other such functions, in order to provide the required reports or records, but this is an administrative decision of the provider, and is not required by the proposed rules.

Full text of the proposed new rules follows:

CHAPTER 58A

CERTIFIED NURSE PRACTITIONER/
CLINICAL NURSE SPECIALIST

SUBCHAPTER 1. GENERAL PROVISIONS

10:58A-1.1 Introduction: certified nurse practitioner and clinical nurse specialist

(a) This chapter is concerned with the provision of health care services by certified nurse practitioners and clinical nurse specialists (CNP/CNS), in accordance with the New Jersey Medicaid Program policies and procedures and the standards set forth by the New Jersey Legislature (N.J.S.A. 45:11-23 et al and P.L. 1991, c. 377) and by the New Jersey Board of Nursing (N.J.A.C. 13:37-7).

(b) An approved New Jersey Medicaid CNP/CNS provider may be reimbursed for medically necessary covered services provided within the scope of her or his license, and her or his approved New Jersey Medicaid Program Provider Agreement.

(c) A CNP/CNS may enroll in the New Jersey Medicaid program and provide covered, medically necessary services as an independent practitioner, or may provide such services as part of another entity, such as a hospital or clinic, physician group practice, or a mixed practitioner practice.

10:58A-1.2 Definitions

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

"Ambulatory care facility" means a health care facility or a distinct part of a health care facility, licensed by the New Jersey State Department of Health, which provides preventive, diagnostic and treatment services to persons who come to the facility to receive services and depart from the facility on the same day.

"Certified nurse practitioner/clinical nurse specialist (CNP/CNS)" means a person currently licensed to practice as a registered professional nurse who is certified by the New Jersey State Board of Nursing in accordance with N.J.A.C. 13:37-7 or similarly licensed and certified by a comparable agency of the state in which he or she practices.

"Certified nurse practitioner/clinical nurse specialist (CNP/CNS) services" means those services provided within the scope of practice of a licensed professional nurse (R.N.) and the certification as a CNP or CNS, defined by the laws and rules of the State of New Jersey, or if in practice in another state, by the laws and regulations of that state.

"Concurrent care" means care rendered to a patient by more than one practitioner/physician where the dictates of medical necessity require the services of one or more clinicians in addition to the attending clinician, so that appropriate and needed care may be provided to the patient.

"Consultation" means the professional evaluation of a patient from a perspective different from that of the treating practitioner, in order to bring enhanced clinical expertise for the benefit of the patient.

"Discipline" means a branch of instruction or learning, such as medicine, dentistry, advanced practice nursing, or chiropractic.

"Early and Periodic Screening, Diagnosis and Treatment (EPSDT)" means a preventive and comprehensive health program for Medicaid recipients through 20 years of age, including the assessment of an individual's care needs through initial and periodic examinations (screenings), the provision of health education and guidance, and the assurance that any identified health problems are diagnosed and treated at the earliest possible time.

"Federally Qualified Health Center (FQHC)" means an entity that is receiving a grant under Section 329, 330, or 340 of the Public Health Service Act, section 1905(l) of the Social Security Act, 42 U.S.C. §1396(l); or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under Section 329, 330, or 340 of the Public Health Service Act; or, based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant; or was

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treated by the Secretary, for purposes of Medicare Part B, as a Federally Funded Health Center as of January 1, 1990.

"HealthStart" means the program of health services provided to pregnant women, infants and small children, as defined at N.J.A.C. 10:49-1.4, Administration, and at N.J.A.C. 10:58A-3.

"HealthStart Maternity Care Services" means a comprehensive package of maternity care services which includes two components, "Medical Maternity Care" and "Health Support Services." (See N.J.A.C. 10:58A-3 for information about HealthStart Services and provider requirements for participation.)

"HealthStart Maternity (Comprehensive) Care Services Provider" means a practitioner who provides HealthStart Maternity Care services either directly, or indirectly through linkage with other practitioners, in independent clinics, hospital outpatient departments, or physicians' offices.

"HealthStart pediatric care provider" means a group of practitioners, a hospital, an independent clinic, or practitioner approved by the New Jersey State Department of Health and the New Jersey Medicaid program to provide a comprehensive package of pediatric care services.

"Independent clinic" means a facility that is not part of a hospital, but is organized and operated in accordance with N.J.A.C. 10:66-1.1 and 42 C.F.R. 440.90.

"Mental health clinic" means a freestanding independent community facility or distinct component of a multi-service ambulatory care facility, which meets the minimum standards established by the Community Mental Health Services Act implementing rules at N.J.A.C. 10:37.

"Mental illness", for purposes of PASARR, refers to a condition which can be disabling and/or chronic, such as schizophrenia, mood disorder, paranoia, panic or other severe anxiety disorder, as described in the International Classification of Diseases, Ninth Revision (ICD-9 (M)), and which can lead to a chronic disability. (See PASARR, N.J.A.C. 10:58A-2.9.)

"Physician" means a doctor of medicine (M.D.) or osteopathy (D.O.) licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners or similarly licensed by a comparable agency of the state in which he or she practices.

"Practitioner" refers to a certified nurse practitioner/clinical nurse specialist (CNP/CNS) as defined by this rule. Practitioners are responsible for examining, diagnosing, treating and counseling patients, and ordering medications, within their specific scope of practice, as defined by the New Jersey Board of Nursing. On occasion, this chapter defines procedures which are provided by CNP/CNSs and by physicians; in these instances, the term "practitioner/physician" is used.

"Pre-Admission Screening and Annual Resident Review (PASARR)" means an evaluation or screening to assess potential or actual nursing facility (NF) residents in respect to mental illness and/or mental retardation, in order to assure that the resident is provided with appropriate services, and to ensure that the NF admits residents whose needs can be met by the services normally provided by the facility.

"Specialty" means a health care practice within a discipline such as pediatrics, obstetrics/gynecology, orthodontics or periodontics. A list of the specializations applicable to CNP/CNSs can be found at N.J.A.C. 10:58A-1.3(e).

10:58A-1.3 Provider participation

(a) In order to participate in the Medicaid program as a CNP/CNS practitioner, the CNP/CNS shall apply to, and be approved by, the New Jersey Medicaid program. Application for approval by the New Jersey Medicaid program as a certified nurse practitioner (CNP) or a clinical nurse specialist (CNS) requires completion and submission of the "Medicaid Provider Application" (FD-20) and the "Medicaid Provider Agreement" (FD-62).

The FD-20 and FD-62 are located as Forms #8 and #9 in the Appendix at the end of the Administration Chapter (N.J.A.C. 10:49), and may be obtained from and submitted to:

Unisys Corporation
Provider Enrollment
CN 4804
Trenton, New Jersey 08650-4804

(b) In order to be approved as a Medicaid participating provider, the CNP/CNS shall be a registered professional nurse and have a current certification as a CNP or CNS, pursuant to N.J.A.C. 13:37-7.

(1) An out-of-State CNP/CNS shall have comparable documentation under the applicable state requirements of the state in which the services are provided.

(c) An applicant shall provide a photocopy of the current license and current certification at the time of the application for enrollment.

(d) In addition to the requirements specified in (a)-(c) above, the following requirements shall be met, in accordance with Federal requirements (HCFA State Medicaid Manual, Section 4415, "Nurse Practitioner Services").

1. In order to participate in the Medicaid program as a certified pediatric nurse practitioner, a pediatric nurse practitioner shall be licensed at the time of participation in accordance with the standards for pediatric nurse practitioner established by the New Jersey Board of Nursing, N.J.A.C. 13:37-7.

2. In order to participate in the Medicaid program as a certified family nurse practitioner, a family nurse practitioner shall be licensed at the time of participation in accordance with the standards for family practice nurse practitioner established by the New Jersey Board of Nursing, N.J.A.C. 13:37-7.

(e) Additional areas of specialization recognized by the New Jersey Board of Nursing currently include:

1. Adult Health;
2. Family;
3. Pediatric;
4. School;
5. Gerontological;
6. Women's Health;
7. OB/GYN;
8. Neonatal;
9. Psychiatric/Mental Health;
10. Community Health;
11. Perinatal;
12. Maternity/Child; and
13. Oncology.

(f) Upon signing and returning the Medicaid Provider Application, the Provider Agreement and other enrollment documents to Unisys, the fiscal agent for the New Jersey Medicaid program, the certified nurse practitioner/clinical nurse specialist will receive written notification of approval or disapproval. If approved, the CNP/CNS will be assigned a provider identifier number. Unisys will furnish the provider identifier number, provider number, and will provide an initial supply of pre-printed claim forms.

(g) In order to participate as a provider of HealthStart services, the CNP/CNS practicing independently or as part of a group shall be a Medicaid provider, and shall meet the HealthStart requirements as specified at N.J.A.C. 10:66-3, and at N.J.A.C. 10:58A-3, including the provider participation criteria specified in N.J.A.C. 10:58A-3.3. The CNP/CNS shall also possess a HealthStart Certificate, issued by the New Jersey Department of Health.

(h) A HealthStart provider shall have a valid HealthStart Provider Certificate. An application for a HealthStart Provider Certificate is available from:

The New Jersey Department of Health
Division of Family Health Services
50 East State Street, CN 364
Trenton, N.J. 08625-0364

10:58A-1.4 Recordkeeping

(a) The certified nurse practitioner/clinical nurse specialist, in any and all settings, shall keep such legible individual records as are necessary to fully disclose the kind and extent of service(s) provided, the procedure code being billed, and the medical necessity for those services.

(b) Documentation of services performed by the CNP/CNS shall include, as a minimum:

1. The date of service;
2. The name of the patient;
3. The patient complaint, reason for visit;

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4. Subjective findings;
5. Objective findings;
6. An assessment;
7. A plan of care, including, but not limited to, any orders for laboratory work, prescriptions for medications;
8. The signature of practitioner rendering the service; and
9. Other documentation appropriate to the procedure code being billed. (See N.J.A.C. 10:58A-4, HCPCS Codes.)

(c) In order to receive reimbursement for an initial visit, the following documentation, at a minimum, shall be placed on the record by the CNP/CNS, regardless of the setting where the examination was performed:
1. Chief complaint(s);
2. A complete history of the present illness and related systemic review-including recordings of pertinent negative findings;
3. Pertinent past medical history;
4. Pertinent family history;
5. A full physical examination pertaining to, but not limited to, the history of the present illness which includes recording of pertinent negative findings; and
6. Working diagnoses and treatment plan including ancillary services and drugs ordered.

(d) Written records in substantiation of the use of a given procedure code shall be available for review and/or inspection if requested by the New Jersey Medicaid program.

(e) Further discussion of the extent of documentation requirements can be found at N.J.A.C. 10:49-9.4, 9.5 and 9.6.

(f) Records, and the documentation of visits to patients in residential health care facilities, shall be maintained in the provider's office record. Residential health care facility records, as specified in (c) above, shall be part of the office records.

(g) In order to document the record for reimbursement purposes, the progress note for routine office visits or follow up care visits shall include the following:
1. In an office, or residential health care facility:
i. The purpose of the visit;
ii. Pertinent history obtained;
iii. Pertinent physical findings, including pertinent negative physical findings based on (g)1i and ii above;
iv. Procedures, if any, with results;
v. Lab, X-ray, EKG, or any other test ordered, with results; and
vi. A diagnosis.
2. In a hospital or nursing facility setting:
i. An update of symptoms;
ii. An update of physical symptoms;
iii. A resume of findings of procedures, if any done;
iv. Pertinent positive and negative findings of lab, X-ray or any other test;
v. Additional planned studies, if any, and the reason for the studies; and
vi. Treatment changes, if any.

(h) To qualify as documentation that the service was rendered by the practitioner during an inpatient stay, the medical record shall contain the CNP/CNS's notes indicating that the practitioner personally:
1. Reviewed the patient's medical history with the patient and/or his or her family, depending upon the medical situation;
2. Performed an examination as appropriate;
3. Confirmed or revised the diagnosis; and
4. Visited and examined the patient on the days for which a claim for reimbursement is made.

(i) The CNP/CNS's involvement shall be clearly demonstrated in notes reflecting the practitioner's personal involvement with, or participation in, the service rendered.

(j) An annual health maintenance examination for individuals under 21 years of age, shall be performed and documented in the recipient's record and shall include:
1. A history (complete initial for new patient, interval for established patient) including past medical history, family history, social history, and systemic review;
2. A developmental and nutritional assessment.
3. A complete, unclothed, physical examination to include also the following:
i. Measurements: height and weight; head circumference to 25 months; blood pressure for children age three or older; and
ii. Vision and hearing screening;
4. The assessment and administration of immunizations appropriate for age and need;
5. Provisions for further diagnosis, treatment and follow-up, by referral if necessary, of all correctable abnormalities uncovered or suspected;
6. Referral to a dentist for children age three or older;
7. The laboratory procedures performed or referred if medically necessary. Recommendations for procedure are as follows:
i. Hemoglobin/Hematocrit three times: six to eight months; two to three or four to six years; and 10 to 12 years.
ii. Urinalysis a minimum of twice: 18 to 24 months and 13 to 15 years.
iii. Tuberculin test (Mantoux): nine to 12 months; and annually thereafter.
iv. Lead screening using blood lead level determinations between six and 12 months, at two years of age, and annually up to six years of age. At all other visits, screening shall consist of verbal risk assessment and blood lead level test, as indicated; and
v. Other appropriate screening procedures, if medically necessary (for example: blood cholesterol, test for ova and parasites, STD).
8. Health education and anticipatory guidance; and
9. An offer of social service assistance; and, if requested, referral to a county welfare agency.

(k) The record and documentation of a Home Visit or House Call shall become part of the office progress notes and shall include, as appropriate, the following information:
1. The purpose of visit;
2. Pertinent history obtained;
3. Pertinent physical findings, including pertinent negative physical findings based on (k)1 and 2;
4. The procedures, if any performed, with results;
5. Lab, X-ray, ECG, etc, ordered with results; and
6. Diagnosis(es) plus treatment plan status relative to present or pre-existing illness(es) plus pertinent recommendations and actions.

10:58A-1.5 Basis of reimbursement

(a) A claim is a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted via hard copy or by means of an approved method of automated data exchange.

(b) An approved New Jersey Medicaid CNP/CNS provider (see N.J.A.C. 10:58A-1.3, Provisions for participation) shall be reimbursed on a fee-for-service basis in accordance with N.J.A.C. 10:58A-4. Reimbursement shall be limited to payment for medically necessary covered services provided within the appropriate scope of practice in accordance with the individual category of certification for advanced practice. The acceptable categories of advanced practice are defined by the New Jersey State Board of Nursing in N.J.A.C. 13:37-7.11 as further amended.

(c) CNP/CNS services may be reimbursed (see N.J.A.C. 10:49-7 and 10:49-8) under either of two billing mechanisms provided by Medicaid for reimbursement of his or her services. The two mechanisms are: a direct billing entity as stated in this chapter, or an employee reimbursed by another Medicaid provider who bills Medicaid on behalf of the CNP/CNS's services, that is, physician employer, group, clinic or hospital.
1. When a CNP/CNS is employed by a practitioner/physician-group, the Medicaid program does not routinely reimburse both a CNP/CNS visit and, on the same day, a visit to an MD or DO within the same billing entity.
i. If specific circumstances should require the two same-day visits, however, the provider entity shall document the medical necessity for the second visit (see concurrent care in (a)2 below).
ii. If a patient receives care from more than one member of a group practice, a partnership or corporation in the same specialty, the total maximum fee allowance shall be the same as that for a single practitioner.

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2. Concurrent care will be reimbursed under the following circumstances:

i. If concurrent care is provided, it shall be clearly documented that significant medical necessity exists for more than one clinician's services, as defined at N.J.A.C. 10:58A-1.2; and

ii. At such time as the patient's condition permits, the primary practitioner/physician shall either resume sole responsibility or transfer the patient to the practitioner/physician supplying additional (concurrent) care.

3. A nurse practitioner and her or his collaborating physician shall not bill for concurrent care except when the concurrent care is necessary for admitting a patient for inpatient hospital care, treating a medical emergency, or arranging for prescriptions for controlled drugs. Such concurrent care is normally limited to a single visit.

4. A CNP/CNS-initiated consultation to another health care professional, excluding another CNP/CNS, will be allowed under the following conditions:

i. Where a medical condition requires evaluation from more than one perspective, discipline or specialty;

ii. Where significant medical necessity exists; and

iii. Where, subsequent to the consultation, the primary practitioner will either resume sole responsibility or transfer the patient to the consultant.

5. When Division review of the documentation of a consultation fails to demonstrate medical necessity, reimbursement will be denied to the physician rendering the consultation.

6. A collaborating physician shall not bill for a consultation for the patient of the CNP/CNS. When it becomes necessary to admit a patient for inpatient hospital care, or to prescribe controlled drugs, the collaborating physician may bill for concurrent care. Such concurrent care is limited to a single visit for each episode.

(d) A CNP/CNS shall not be reimbursed as an independent provider by the New Jersey Medicaid program when the program is required to reimburse an approved provider through another mechanism for these same services, for example, a hospital or home health agency-salaried CNP/CNS whose salary is included in the Medicaid rate.

1. If a CNS/CNP is employed by a physician, a physician group, another practitioner or practitioner group, a hospital, an independent clinic or other similar health care entity who is a Medicaid provider, the CNP/CNS is referred to Physician Services (N.J.A.C. 10:54) or Hospital Services (N.J.A.C. 10:52), or Independent Clinic Services (N.J.A.C. 10:66) for regulations and billing instructions.

i. Practitioners rendering services in clinics cannot bill fee-for-service. The clinic must bill for all services rendered in the clinic setting.

(e) When billing, a CNP/CNS shall use her or his Medicaid Provider Servicing Number (MPSN) to identify each service she or he has performed as separate and distinct from services of any other provider.

(f) CNP/CNS providers shall certify that they have personally rendered any services for which they have billed.

(g) Payment for CNP/CNS services covered under the New Jersey Medicaid program is based upon the customary charge prevailing in the community for the same service but shall not exceed the "Maximum Fee Allowance Schedule" specified in N.J.A.C. 10:58-4. In no event shall the charge to the New Jersey Medicaid program exceed the charge by the provider for identical services to other individuals, groups or governmental agencies.

1. A CNP/CNS billing independently receives direct payment from Medicaid for his or her services under the provisions of this chapter. Reimbursement is on a fee-for-service basis.

2. The submittal and processing of claims requires the entry of two numbers on the claim form: the Medicaid Provider Billing Number and the Medicaid Provider Servicing Number.

i. The Medicaid Provider Billing Number and Servicing Numbers are identical when the CNP/CNS is a solo practitioner who bills Medicaid directly for his or her services. The single number is entered on the claim form as the provider billing number and the identifier of the practitioner who rendered the service.

ii. If the CNP/CNS is a member of a CNP/CNS practitioner group, the number assigned to the practitioner group will be the Medicaid Provider Billing Number. The number assigned to the CNP/CNS practitioner will be the Medicaid Provider Servicing Number. (See Fiscal Agent Billing Supplement for instructions for filling out the claim form.)

iii. When an employer of the practitioner (such as a physician, independent clinic, or similar health care organization) bills on behalf of the services rendered by a CNP/CNS practitioner, the Medicaid Provider Billing Number is the number of the employer. The identifier of the CNP/CNS practitioner rendering the service will be the Medicaid Provider Servicing Number.

(h) Reimbursement is not made for, and clients may not be asked to pay for, broken appointments.

SUBCHAPTER 2. PROVISION OF SERVICES

10:58A-2.1 General Provisions

(a) This subchapter describes the New Jersey Medicaid programs' policies and procedures for the provision of Medicaid-covered services by certified nurse practitioner/clinical nurse specialist providers. Services are separately identified and discussed only where unique characteristics or requirements exist. Unless indicated otherwise, reimbursement provisions are located in N.J.A.C. 10:58A-1.5, Basis for reimbursement.

(b) The New Jersey Medicaid program shall reimburse for CNP/CNS services provided only when the patient is an eligible Medicaid client at the time services are rendered. CNP/CNSs shall verify the patient's current eligibility status prior to providing services.

10:58A-2.2 Provisions concerning Medical Services

(a) For patient contacts where the patient presents with a chief complaint, the evaluation and management procedure codes at N.J.A.C. 10:58A-4.2(r)1 through 6 shall be applied.

(b) In the absence of patient complaints, the Preventive Medicine services codes and the Newborn Care code shall be applied for adults and for children. See N.J.A.C. 10:58A-4.2(r) 7 and 8.

10:58A-2.3 Surgical procedures

Typically, office visits are not reimbursed in combination with surgical procedures. (When two services are rendered, for example, an office visit and a surgical procedure, the program will pay the higher fee, either the visit or the procedure.) The procedure codes within the CNP/CNS scope of practice which are excluded from the general policy are: 29105 through 29740 (see N.J.A.C. 10:58A-4.2(d), (e) and (f)), 31720, and 36415.

10:58A-2.4 Provisions governing Prescribing include:

(a) All covered pharmaceutical services provided by CNP/CNSs under the New Jersey Medicaid program shall be prescribed in accordance with N.J.A.C. 13:37-7.6 and 7.7; N.J.A.C. 10:49, N.J.A.C. 10:51, and this chapter.

(b) The Pharmaceutical Services manual, N.J.A.C. 10:51, sets forth the provisions for covered and non-covered pharmaceutical services, prior authorization, quantity of medication, administration of drugs, pharmaceutical dosage and directions, telephone-rendered original prescriptions, changes or additions to the original prescription, non-proprietary or generic dispensing, and prescription refill.

(c) Medicaid will reimburse the practitioner directly for the cost of the drugs described at N.J.A.C. 10:58A-4.3 and 4.4.

10:58A-2.5 Clinical laboratory services

(a) "Clinical laboratory services" means professional and technical laboratory services performed by a clinical laboratory certified by HCFA in accordance with the Clinical Laboratory Improvement Act (CLIA) and ordered by a physician or other licensed practitioner, within the scope of his or her practice, as defined by the laws of the State of New Jersey and/or of the state in which the practitioner practices.

(b) Clinical laboratory services are furnished by clinical laboratories and by physician office laboratories (POLs) that meet the Health Care Financing Administration regulations pertaining to clinical laboratory services defined in the Clinical Laboratory Improvement Amendments (CLIA) of 1988, section 1902(a)(9) of the Social Security Act, 42 U.S.C. §1396(a)(9), and as indicated at N.J.A.C. 10:61-1.2, the Medicaid program's Independent Clinical Laboratory Services manual, and N.J.A.C. 8:44 and N.J.A.C. 8:45.

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(c) All independent clinical laboratories and other entities performing clinical laboratory testing shall possess certification as required by CLIA 1988, and the New Jersey Department of Health rules found in N.J.A.C. 8:44 and N.J.A.C. 8:45.

(d) A CNP/CNS may claim reimbursement for clinical laboratory services performed for his or her own patients within his or her own office, subject to the following:

1. A CNP/CNS shall meet the conditions of the CLIA regulations before she or he may perform clinical laboratory testing for Medicaid recipients; and

2. The clinical laboratory tests shall be standard clinical laboratory procedures consistent with the CNP/CNS's CLIA certification, certificate of waiver or certificate of registration as an independent clinical laboratory.

(e) When the clinical laboratory test is performed on site, the venipuncture is not reimbursable as a separate procedure: its cost is included within the reimbursement for the lab procedure.

(f) When the CNP/CNS refers a laboratory test to an independent clinical reference laboratory:

1. The clinical reference laboratory shall be certified under the CLIA as described above at (a) and (b) to perform the required laboratory test(s);

2. The clinical laboratory shall be licensed by the New Jersey State Department of Health, as described above at (b) and (c), or comparable agency in the state in which the laboratory is located;

3. The clinical laboratory shall be approved for participation as an independent laboratory provider by the New Jersey Medicaid program in accordance with (b) above, and

4. Independent clinical laboratories shall bill the New Jersey Medicaid program for all reference laboratory work performed on their premises. The CNP/CNS will not be reimbursed for laboratory work performed by a reference laboratory.

10:58A-2.6 Evaluation and management services

(a) The evaluation and management codes can indicate services performed in a practitioner's office, in nursing facilities and residential health care facilities, in clinics, in Federally qualified health centers (FQHCs), and in inpatient hospitals.

(b) Reimbursement for an initial office visit or initial residential health care facility visit will be disallowed, if a preventive medicine service, EPSDT examination or office consultation was billed within a 12 month period by the same practitioner, group of practitioners, or shared health care facility sharing a common record.

(c) Provisions for initial visits, evaluation and management, are:

1. For office visits and for other care apart from inpatient hospital, providers are permitted to bill for an initial visit only once for a specific patient, subject to the following exceptions.

i. When a shared health care facility, a group of physicians and/or other practitioners (CNPs or CNSs) share a common record, the Division will reimburse only one initial visit to that provider group.

ii. Further encounters with that patient will be billed and reimbursed by means of "established patient" codes. See N.J.A.C. 10:58A-4.1 through 4.5.

iii. Reimbursement for an initial office visit also precludes subsequent reimbursement to the same provider for an initial residential health care facility visit and vice versa.

2. If the setting is a nursing facility, the initial visit concept will still apply when considered for reimbursement purposes; however, subsequent readmissions to the same facility may be designated as initial visits, as long as a time interval of 30 days or more has elapsed between admissions.

3. In the inpatient hospital setting, the initial visit concept still applies for reimbursement purposes, except that subsequent readmissions to the same facility may be designated as Initial Visits as long as a time interval of 30 days or more has elapsed between admissions.

4. An initial hospital visit will be disallowed to the same practitioner, group of practitioners, shared health care facility, or practitioners sharing a common record who submit a claim for a consultation and transfer the patient to their service.

5. In order to use the HCPCS procedure code to bill for an Initial Visit, the CNP/CNS shall provide the minimal documentation in the record regardless of the setting where the examination was performed. See N.J.A.C. 10:58A-1.4(c).

(d) Provisions for office or other outpatient services-established patient, or subsequent hospital care: evaluation and management services:

1. This service is considered to be the routine office visit or follow-up care visit, and the visit will conform to the CPT-4 description of provider involvement and time. The setting could be office, hospital, nursing facility or residential health care facility. The documentation requirements for these visits can be found at N.J.A.C. 10:58A-1.4.

(e) In the absence of patient complaints, the procedure codes identified as preventive medicine services are applied, for adults and for children.

1. Preventive medicine services codes (new patient) are comparable, in respect to reimbursement level, to an initial visit and, therefore, may only be billed once per patient. Future use of these codes will be denied when the recipient is seen by the same practitioner, group of practitioners, or involves a shared health care facility sharing a common record.

(f) The following apply to preventive medicine services, the annual health maintenance examination, for new or established patients under the age of 21:

1. These codes are not allowable for payment when used following an EPSDT or HealthStart pediatric examination performed within the preceding 12 months for a child older than two years of age.

2. For well-child care provided to children under the age of two, the provider is urged to use age-appropriate EPSDT or pediatric HealthStart codes.

3. Preventive medicine codes may be used up to six times (at ages one, two, four, six, nine and 12 months) during the patient's first year of life and up to three times (at ages 15, 18 and 24 months) during the patient's second year of life, in accordance with the periodicity schedule of preventive visits recommended by the American Academy of Pediatrics. These codes should not be used for children under two years of age participating in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) or Pediatric HealthStart program.

(g) Concerning the Consultation procedures, in reference to CNP/CNSs; a consultation is eligible for reimbursement only when performed by a physician specialist recognized as such by this program, when the request has been made by or through the patient's attending physician or CNP/CNS, and the need for such a request would be consistent with good medical practice. CNP/CNSs will not be reimbursed for consultation procedures, but mention of these procedures is included for those instances when the CNP/CNS needs to refer her or his patient(s) for consultation, to a specialist other than her/his collaborating physician.

(h) The home services recognized as "house calls" refer to a practitioner visit limited to the provision of medical care to an individual who would be too ill to go to a practitioner's office and/or is "home bound" due to his/her physical condition. These codes do not apply to the residential health care facility or nursing facility setting.

1. For purposes of Medicaid reimbursement, "home visits" apply when the provider visits Medicaid recipients who do not qualify as "home bound."

(i) The following concern emergency department and inpatient hospital services:

1. When a practitioner sees his or her patient in the emergency room instead of his or her office, the practitioner shall use the same codes for the visit that would have been used if seen in the physician's office. Records of that visit should become part of the notes in the office chart.

2. When patients are seen by hospital-based emergency room practitioners who are eligible to bill the Medicaid program, the appropriate HCPCS code is used. These "visit" codes are listed at N.J.A.C. 10:58A-4.2.

3. Critical care/prolonged services will be covered when the patient's situation requires constant practitioner attendance which is given by the practitioner to the exclusion of his or her other patients and duties, and therefore, for him or her, represents what is beyond the usual service.

i. Critical care/prolonged success shall be verified by the applicable records as defined by the setting. The records shall show in the practitioner's handwriting the time of onset and time of completion of the

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service. All settings are applicable such as office, hospital, home, residential health care facility and nursing facility.

ii. The reimbursement for the "critical care" or prolonged services utilizes the time parameter, and is all-inclusive, meaning that it will be the only payment for care provided by the practitioner to the patient at that time. The specific procedures performed during that patient encounter will not be reimbursed in addition to the "critical care/prolonged services" payment.

4. For reimbursement purposes, routine hospital "newborn care for a well baby" requires, as a minimum, routine newborn care by a practitioner other than the practitioner(s) rendering maternity service.

i. "Newborn care for a well baby" includes complete initial and complete discharge physical examination, and conference(s) with the parent(s). These examinations shall be documented in the newborn's medical record.

ii. This code applies to healthy newborns and the fee for this service is all-inclusive. Consequently, the provider may not bill multiple units or bill for visits made on the subsequent day or the discharge day for a healthy newborn.

iii. For sick babies, use the appropriate hospital care code, as indicated at N.J.A.C. 10:58A-4.2.

10:58A-2.7 Family planning services

(a) Family planning services include medical history and physical examination (including pelvic and breast); the ordering of diagnostic and laboratory tests; the prescribing of drugs and biologicals, medical devices and supplies; and providing continued medical supervision, counseling, and continuity of care.

1. The New Jersey Medicaid program shall not reimburse for services for the diagnosis or treatment of infertility. Services provided primarily for the diagnosis and treatment of infertility, including related office visits, drugs, laboratory services, radiological and diagnostic services and surgical procedures shall not be covered by the New Jersey Medicaid program.

i. Exception: When a service is provided that is ordinarily considered an infertility service, but is provided for another purpose, the CNP/CNS shall submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, CN 712, (Mail Code #14), Trenton, New Jersey, 08625-0712.

(b) The Norplant System (NPS) is a Medicaid-covered service provided to reproductive-age women with established regular menstrual cycles, in conformance with the prescribing information approved by the Food and Drug Administration. Patient education and counseling shall be provided relating to the NPS, including pre- and post-insertion instructions, indications, contraindications, benefits, risks, side effects, and other contraceptive modalities.

1. A clinic or office visit relating only to the insertion or removal of the Norplant System (NPS) shall not be reimbursable on the day of the insertion or removal. Only two insertions and two removals of the NPS per recipient shall be reimbursed during a five year continuous period. The practitioner shall not be reimbursed for the NPS in conjunction with other forms of contraception, for example, intra-uterine device or Depo-provera injection.

10:58A-2.8 Mental health services

(a) Certified nurse practitioners/clinical nurse specialists who are certified in the advanced practice category of "Psychiatric/Mental Health" (CNP/CNS, Psychiatric/Mental Health) are qualified to perform and be reimbursed independently for psychiatric evaluations for the New Jersey Medicaid program.

1. For each psychiatric therapy patient contact, written documentation shall be developed and maintained to support each medical or remedial therapy, service, activity, or session for which billing is made. The documentation shall consist of the following:

i. The specific services rendered and modality used, such as individual, group, and/or family therapy;

ii. The date services were rendered;

iii. The duration of services provided (1 hour, 1/2 hour);

iv. The signature of the CNP/CNS, Psychiatric/Mental Health, who rendered the service;

v. The setting in which services were rendered;

vi. A notation of impediments, unusual occurrences or significant deviations from the treatment described in the Plan of Care;

vii. Notations of progress, impediments, treatment, or complications; and

viii. Other relevant information.

(b) Prior authorization for mental health services shall be required when services are rendered in certain settings:

1. Prior authorization for inpatient hospital mental health services is not required.

2. For services provided in nursing facilities and all facilities covered under the Rooming and Boarding House Act of 1979 (RBHA '79), N.J.S.A. 55:13B-1 et seq., prior authorization shall be required for mental health services exceeding $400.00 in payments in any 12-month service year rendered to a Medicaid recipient residing in either a nursing facility or RBHA '79 facility. The request for prior authorization shall be submitted directly to the appropriate Medicaid District Office that serves that nursing or RBHA '79 facility on the "Authorization of Mental Health Services (FD-07)" form.

3. Services provided by a nurse practitioner in an independent clinic, including a mental health clinic and FQHCS shall only be billed by the clinic, after prior authorization in accordance with the Clinic Services Manual, N.J.A.C. 10:66-1.4.

4. In all other settings: prior authorization shall be required for mental health services rendered to a Medicaid recipient (within a 12-month service year commencing with the patient's initial visit) when those services are provided in a setting other than an inpatient hospital, nursing facility or RBHA '79 facility, and when the reimbursement for those services exceeds $900.00 to the CNP/CNS, Psychiatric/Mental Health. The request for prior authorization shall be submitted directly to the Psychiatric Consultant, Mental Health Services, Office of the Medical Affairs and Provider Relations, Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625 on the "Authorization of Mental Health Services (FD-07)" form.

(c) Prior authorization for mental health services may be granted by the New Jersey Medicaid program for a maximum period of one year, and additional authorizations may be requested. The request for authorization shall include the diagnosis, as set forth in the ICD-9 CM (latest revision), the treatment plan and the progress report, in detail. When a request for prior authorization is denied or modified, the CNP/CNS shall be notified of the reason, in writing, by the fiscal agent.

3. When a patient's authorized treatment plan is changed because of a change in the patient's treatment needs, which results in an increase in service or change in the kind of service, a new authorization or a modification of the existing authorization shall be requested by the CNP/CNS.

Ordinarily only one mental health procedure shall be reimbursed per day for the same recipient by the same physician, group of physicians, shared health facility, psychologist or CNP/CNS(P/MH) sharing a common record. When circumstances require more than one mental health procedure, the medical necessity for the services shall be documented in the patient's chart, and a determination regarding reimbursement shall be made by the Division on a case-by-case basis.

(d) CNP/CNS(P/MH)s providing mental health services shall document those services as described above and at N.J.A.C. 10:58A-1.4, Recordkeeping.

10:58A-2.9 PASARR, Pre-Admission Screening (PAS) and Annual Resident Review (ARR)

(a) Federal legislation (1919(a)(b) of the Social Security Act, 42 U.S.C. 1396r) established PreAdmission Screening (**PAS**) for MI/MR applicants to Medicaid participating nursing facilities (NFs) and an Annual Resident Review (**ARR**) program for residents of Medicaid participating NFs.

(b) Through PASARR, NF applicants or residents of NFs are evaluated to assess the appropriateness of their admission to the facility or continued residence within the facility, in respect to whether they need specialized services for the treatment of mental illness or mental retardation. Persons in need of specialized services (active treatment) will be directed to an alternate placement.

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(c) The initial PAS screening is conducted by a regional staff nurse, to determine whether the individual requires nursing facility level of care.

1. After the RSN has determined that the individual needs NF-level services, an individual identified as meeting the criteria for mental retardation services is referred to the staff of the Division of Developmental Disabilities for a specialized services evaluation.

2. An individual identified as meeting criteria for mental illness is evaluated by a psychiatrist, an attending physician or a certified nurse practitioner/clinical nurse specialist, psychiatric/mental health (CNP/CNS, Psychiatric/Mental Health) to determine the need for specialized services.

(d) Professionals who are qualified to perform psychiatric evaluations for PASARR include psychiatrists, general physicians, both doctors of medicine (M.D.) and of osteopathy (D.O.), and certified nurse practitioners/clinical nurse specialists who are certified in the advanced practice category of Psychiatric/Mental Health.

(e) The initial Pre-Admission PASARR Screen shall be used for Medicare and/or Medicaid persons residing in the community (currently at home or boarding home) who are applicants to Medicare/Medicaid nursing facilities and are being examined by an attending-physician or CNP/CNS, Psychiatric/Mental Health to determine the need for specialized services for mental illness. Practitioners completing the screen to determine the need for specialized services shall use the 99333 and W9848 HCPCS procedure codes, with a Medicaid maximum fee allowance of $44.00.

1. If the screening examination reveals the need for a more specialized examination, a psychiatric consultation may be requested by the attending physician or CNP/CNS Psychiatric/Mental Health. Existing consultation codes for limited consultation and for comprehensive consultation may be used for this purpose by the consulting psychiatrist, as appropriate. Applicants with a diagnosis of MI or MR, regardless of the payment source of their care, shall be subject to the PASARR review. For MI individuals funded through other than the New Jersey Medicaid program, the fee for psychiatric evaluations conducted by psychiatrists or in NFs by attending physicians, CNP/CNSs Psychiatric/Mental Health will be paid by Medicare, other third party carriers or by the individual.

2. If the individual has a diagnosis of Alzheimer's disease or related dementias, as described in the 1987 edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-III), documentation shall be provided to the admitting Medicaid-certified nursing facility, for the individual's clinical record, on the history, physical examination, and diagnostic workup, to support the diagnosis. Dementia-diagnosed individuals shall have psychiatric disorders diagnosed and documented. (Neither a new examination nor a comprehensive neurological evaluation shall be required.) Individuals diagnosed as mentally retarded who are also diagnosed as having organic dementia shall be evaluated in accordance with the DDD Level II screens to determine need for specialized services.

i. The examining attending-physician or CNP/CNS Psychiatric/Mental Health shall obtain the "Division of Mental Health and Hospitals Psychiatric Evaluation" form (DMH&H-1994) from the Medicaid District Office and shall submit the completed form to the Division of Mental Health and Hospitals, CN-727, Trenton, New Jersey 08625-0727, Attention: PASARR Coordinator.

ii. The evaluation form shall be mailed no later than 48 hours following the consultation to prevent undue delay in patient placement.

(f) The Annual Resident Review of PASARR, with maximum fee allowance (CNP/CNS Psychiatric/Mental Health) of $44.00 is used for Medicare and/or Medicaid nursing facility patients who are being evaluated by the attending physician or CNP/CNS Psychiatric/Mental Health for the purposes of an annual resident review to determine the need for specialized services for mental illness.

1. If this examination reveals the need for a more specialized examination, a psychiatric consultation may be requested by the attending physician or CNP/CNS Psychiatric/Mental Health. Existing consultation codes for limited consultation and for comprehensive consultation may be used for this purpose by the consulting psychiatrist as appropriate.

2. If the individual has a diagnosis of Alzheimer's disease or related dementias, as described in the 1987 edition of the Diagnostic and Statistical Manual of Mental Disorders, once the original documentation has been obtained, that documentation supporting the diagnosis shall be kept on the resident's current clinical record. (A new examination does not have to be completed.)

3. The procedure can only be utilized on an annual basis by the same physician or CNP/CNS Psychiatric/Mental Health for the same patient.

i. The provider shall attach a completed Division of Mental Health and Hospitals Psychiatric Evaluation form (DMH&H-1994) to the patient's clinical chart. The Nursing Facility administrator will be responsible for providing these forms to the attending-physician or CNP/CNS Psychiatric/Mental Health.

ii. The attending physician or CNP/CNS Psychiatric/Mental Health will complete the psychiatric evaluation. The NF will submit a copy of the Psychiatric Evaluation to the MDO. The required annual resident review information shall be submitted to MDOs no later than the fifth day of the month in which the reassessments are due.

10:58A-2.10 Early and periodic screening, diagnosis, and treatment (EPSDT)

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is a Federally mandated comprehensive child health program for Medicaid recipients from birth through 20 years of age. The term "EPSDT Services" means the following:

1. EPSDT Screening Services;
2. Vision Services;
3. Dental Services;
4. Hearing Services; and
5. Such necessary health care diagnostic services, treatment and other measures to correct or ameliorate defects, and physical and mental illnesses and conditions discovered by the screening services. (See 42 CFR 441 Subpart B.)

(b) A certified nurse practitioner/clinical nurse specialist, pediatric nurse practitioner, or family nurse practitioner may provide EPSDT screening services.

(c) An EPSDT examination shall include the following:

1. A comprehensive health and developmental history including assessment of both physical and mental health development;

2. A comprehensive unclothed physical exam including vision and hearing screening, dental inspection, and nutritional assessment;

3. Appropriate immunizations according to age and health history;

4. Appropriate laboratory tests, including:

i. Hemoglobin/hematocrit;

ii. Urinalysis;

iii. Tuberculin test, annually;

iv. Lead screening using blood lead level determinations between 6 and 12 months, at 2 years of age, and annually up to six years of age. At all other visits, screening shall consist of verbal risk assessment and additional blood lead level testing, if indicated; and

v. Other appropriate medically necessary procedures.

5. Health education, including anticipatory guidance;

6. Vision services:

i. A newborn examination including general inspection of the eyes, visualization of the red reflex, and evaluation of ocular motility;

ii. An appropriate medical and family history;

iii. An evaluation, by age six months, of eye fixation preference, muscle imbalance, and pupillary light reflex; and

iv. A second examination with visual acuity testing by age three or four years.

v. Periodic vision testing for school aged children:

(1) Kindergarten or first grade (five or six years);
(2) Second grade (seven years);
(3) Fifth grade (10/11 years);
(4) Eighth grade (13/14 years); and
(5) Tenth or eleventh grades (15/17 years).

vi. Referral for vision screening of children who:

(1) Cannot read the majority of the 20/40 line before their fifth birthday;
(2) Have a two-line difference of visual acuity between the eyes;
(3) Have suspected strabismus; or
(4) Have an abnormal light or red reflex.

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7. Hearing Services:
i. Newborn hearing screening, including risk assessment;
ii. Individual hearing screening administered annually to all children through age eight and to all children at risk of hearing impairment.
iii. Screening every other year for children age eight and older.
8. Dental Services:
i. Intraoral examination included as an integral part of a general physical examination;
ii. A formal referral to a dentist at one year of age (recommended) and mandatory for children three years of age and older;
iii. Dental inspection and prophylaxis every six months until 17 years of age, then annually.
9. Referral for further diagnosis and treatment or follow up of all correctable abnormalities, uncovered or suspected. Referral may be to the provider conducting the screening examination, or to another provider, as appropriate.
(d) Children two years of age and older are provided preventive health care services through the EPSDT program. In addition, Medicaid providers who have not been certified as HealthStart Pediatric Providers use the EPSDT procedure codes for preventive health care services for children from birth through age two when the requirements for the EPSDT examination have been met. The following schedule reflects the ages at which children shall be provided EPSDT screening:
1. Under six weeks;
2. Two months;
3. Four months;
4. Six months;
5. Nine months;
6. 12 months;
7. 15 months;
8. 18 months;
9. 24 months; and
10. Annually through age 20.
(e) Reimbursement policy for EPSDT services:
1. Each periodic EPSDT screening shall be billed only once for the same patient by the same practitioner(s) sharing a common record.
2. Reimbursement for the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) examination is contingent upon the submission of a completed "Report and Claim for EPSDT/HealthStart Screening and Related Procedures (MC-19)" within 30 days of the date of service.
3. Laboratory, other diagnostic procedures, and immunizations shall be eligible for separate reimbursement. (See N.J.A.C. 10:58-2.5)

SUBCHAPTER 3. HEALTHSTART

10:58A-3.1 HealthStart service
The New Jersey HealthStart program provides comprehensive maternity services for pregnant women (including those determined to be presumptively eligible) and child health services for children (through two years of age) who are eligible for Medicaid benefits.

10:58A-3.2 Purpose
(a) The purpose of HealthStart is to provide for comprehensive maternity services to pregnant Medicaid recipients, including those determined to be presumptively eligible, and preventive child health services for Medicaid recipients up to the age of two.
1. Pediatric HealthStart services are an expansion of the EPSDT program as described at N.J.A.C. 10:58A-2.10.
(b) This subchapter describes the HealthStart services which have been determined to lie within the scope of practice of the CNP/CNS, as defined by the New Jersey Board of Nursing, and to constitute the services to be provided by the independently practicing CNP/CNS.

10:58A-3.3 Scope of services
(a) HealthStart maternity services provided by a HealthStart-certified CNP/CNS are health support services provided in accordance with the HealthStart guidelines. HealthStart pediatric services include up to nine preventive visits, as recommended by the American Academy of Pediatrics, provided by a HealthStart-certified provider who assumes the primary responsibility for coordination and continuity of care.
(b) HealthStart maternity health support services include:
1. Case coordination services;
2. Health education assessment and counseling services;
3. Nutrition assessment and counseling services;
4. Social-psychological assessment and counseling services.
5. Home visitation; and
6. Outreach, referral and follow-up services.
(c) HealthStart comprehensive pediatric care includes nine preventive child health visits; all the recommended immunizations; case coordination and continuity of care including, but not limited to, the provision or arrangement for sick care, 24 hour telephone access, and referral and follow-up for complex or extensive medical, social, psychological, and nutritional needs.

10:58A-3.4 HealthStart provider participation criteria
(a) The following Medicaid-enrolled provider types are eligible to participate as HealthStart providers: independent clinics, hospital outpatient departments, local health departments meeting the New Jersey State Department of Health's Improved Pregnancy Outcome criteria and/or approved as Child Health Conferences, physicians and physician groups, certified nurse midwives and CNP/CNSs.
(b) In addition to New Jersey Medicaid program rules applicable to provider participation, HealthStart/ CNP/CNS providers shall:
1. Sign an Addendum to the New Jersey Medicaid program's Provider Agreement;
2. Have a valid HealthStart Provider Certificate; and
3. Provide maternity health support services and/or pediatric services in accordance with this subchapter.
(c) In addition to (a) and (b) above, a HealthStart CNP/CNS pediatric care provider shall participate in program evaluation and training activities including, but not limited to, documentation of outreach and follow-up activities in the patient's record.
(d) A site review may be required to ascertain an applicant's ability to meet the standards for a HealthStart Provider Certificate and to provide services in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Providers in the appropriate area.
(e) A HealthStart Provider Certificate shall be reviewed by the New Jersey State Department of Health at least every 18 months from the date of issuance.
(f) An application for a HealthStart Provider Certificate is available from:

HealthStart Program
New Jersey State Department of Health
50 East State Street
CN 364
Trenton, NJ 08625-0364

(g) Guidelines for HealthStart services, when rendered by a CNP/CNS employed by a clinic, physician or hospital, can be found at Independent Clinic Services, N.J.A.C. 10:66; Physician Services, N.J.A.C. 10:54; or Hospital Services, N.J.A.C. 10:52; respectively, and the guidelines for qualifications of HealthStart providers can be found at N.J.A.C. 10:66, Independent Clinic Services.

10:58A-3.5 Termination of HealthStart Provider Certificate
(a) The New Jersey State Department of Health is responsible for enforcement of its requirements for HealthStart Provider Certificates and for evaluation and enforcement of its requirements within the Standards and Guidelines for HealthStart Providers.
(b) Causes for termination of the HealthStart Provider Certificate by the New Jersey State Department of Health are as follows:
1. Failure to comply with HealthStart standards;
2. Failure to complete the recertification process; and/or
3. Voluntary withdrawal from the HealthStart program.
(c) Termination of the HealthStart Provider Certificate shall result in the termination of the HealthStart Provider Agreement with the New Jersey Medicaid program. Providers who are decertified by HealthStart continue to be eligible to provide regular Medicaid services, at regular Medicaid reimbursement rates.

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10:58A-3.6 Records: documentation, confidentiality and informed consent for HealthStart maternity care providers

(a) HealthStart CNP/CNS maternity care providers shall have policies which protect patient confidentiality, provide for informed consent, and document health support services in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Maternity Care Providers.

(b) An individual record shall be maintained for each patient throughout the pregnancy.

(c) Each record shall be confidential and shall include at least the following: history and physical examination findings, assessment, a care plan, treatment services, laboratory reports, counseling and health instructions provided, and documentation of referral and follow-up services.

(d) There shall be policies and procedures for informed consent for all HealthStart services.

10:58A-3.7 Health support services

(a) Health support services are a component of comprehensive maternity care. In order to render HealthStart health support services, a CNP/CNS provider must be affiliated with, or have a formal agreement with an obstetrical provider rendering the medical maternity care component. Health support services are provided as follows:

1. Case coordination services shall facilitate the delivery of continuous, coordinated and comprehensive services for each patient in accordance with this subchapter and as follows:

i. A permanent case coordinator shall be assigned to each patient no later than two weeks after the HealthStart enrollment visit;

ii. Prenatal case coordination activities shall include, but not be limited to:

(1) Orienting the patient to all services;

(2) Developing, maintaining and coordinating the care plan in consultation with the patient;

(3) Coordinating and monitoring the delivery of all services and referrals;

(4) Monitoring and facilitating the patient's entry into and continuation with maternity services;

(5) Facilitating and providing advocacy for obtaining referral services;

(6) Reinforcing health teachings and providing support;

(7) Providing vigorous follow up for missed appointments and referrals;

(8) Arranging home visits;

(9) Meeting with the patient and coordinating patient care conferences; and

(10) Reviewing, monitoring and updating the patient's complete record;

iii. Postpartum care coordination activities shall include, but not be limited to:

(1) Arranging and coordinating the postpartum visit and any home visit;

(2) Arranging with the obstetrical care provider to obtain the labor, delivery and postpartum hospital summary record information no later than two weeks after delivery;

(3) Linking the patient to appropriate service agencies including: the Special Supplemental Food Program for Women, Infants and Children (WIC), pediatric care (preferably with a HealthStart pediatric care provider), future family planning, Special Child Health Services County Case Management Unit, and other health and social agencies, if needed;

(4) Arranging for the transfer of pertinent information or records to the pediatric care and/or future family planning service providers;

(5) Coordinating referrals and following up on missed appointments and referrals; and

(6) Reinforcing health instructions for mother and baby.

2. Nutrition assessment and basic guidance services shall be provided to orient and educate all patients to nutritional needs during pregnancy and educate the patient to good dietary practices in accordance with this subchapter. Specialized nutrition assessment and counseling shall be provided to those women with additional needs. Services shall be provided as follows:

i. Initial assessment services, which shall include, but not be limited to:

(1) Review of the patient's chart;

(2) Identification of dental problems which may interfere with nutrition;

(3) Nutritional history;

(4) Current nutritional status;

(5) Determination of participation in WIC or other food supplement programs; and

(6) Identification of need for specialized nutritional counseling;

ii. Subsequent nutritional assessment, which shall include, but not be limited to:

(1) Monitoring of weight gain/loss;

(2) Identification of special dietary needs; and

(3) Identification of need for specialized nutritional counseling services;

iii. Prenatal nutritional guidance, which shall include, but not be limited to:

(1) Basic instruction on nutritional needs during pregnancy including balanced diet, vitamins and recommended daily allowances;

(2) Review and reinforcement of other nutritional and dietary counseling services the patient may be receiving;

(3) Instruction on food purchase, storage and preparation;

(4) Instruction on food substitutions, as indicated;

(5) Discussion of infant feeding and nutritional needs; and

(6) Referral to food supplementation programs through the case coordinator;

iv. Specialized nutrition assessment and counseling, which shall be provided to those women with additional needs;

v. Referral for extensive specialized nutritional services which shall be initiated by the medical care provider or the nutritionist under the supervision of the medical care provider in coordination with the case coordinator; and

vi. Postpartum nutritional assessment and basic guidance services which shall include, but not be limited to:

(1) Review and reinforcement of good dietary practices;

(2) Review of instruction on dietary requirement changes; and

(3) Instruction on breast feeding and/or formula preparation and feeding.

3. Social-psychological assessment and basic guidance services shall be provided to all patients to assist the patient in resolving social-psychological needs, in accordance with this subchapter. Specialized social-psychological assessment and short-term counseling shall be provided to those women with additional needs. Services shall be provided as follows:

i. Initial social-psychological assessment services which shall include, but not be limited to:

(1) Determining financial resources and living conditions;

(2) Determining the patient's personal support system;

(3) Determining the patient's attitudes and concerns regarding the pregnancy;

(4) Ascertaining present and prior involvement by the patient with other social programs or agencies and current social service needs;

(5) Ascertaining educational and/or employment status and needs; and

(6) Identification of the need for specialized social-psychological and/or mental health evaluation and counseling services;

ii. Subsequent social-psychological assessment services which shall include, but not be limited to:

(1) Determination of patient's reaction to pregnancy;

(2) Ascertaining the reaction of family, friends and actual support person to the pregnancy;

(3) Identification of the need for social service interventions and advocacy; and

(4) Identification of the need for specialized social-psychological and/or mental health evaluation and counseling;

iii. Basic social-psychological guidance, which shall include, but not be limited to:

(1) Orientation and information on available community resources;

(2) Orientation regarding stress and stress reduction during pregnancy; and

(3) Assistance with arrangements for transportation, child care and financial needs;

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iv. Specialized, short-term social-psychological counseling, which shall be provided to women who are identified through assessment or basic counseling as having need for more intense service;

v. Referral for extensive specialized social-psychological services, which shall be initiated by the medical care provider or by the social worker under the supervision of the medical care provider and in coordination with the case coordinator; and

vi. Postpartum social-psychological assessment and guidance which shall include, but not be limited to:

(1) Review of prenatal, labor, delivery and postpartum course;

(2) Assessment of the patient's current social-psychological status, including mother and infant bonding and the acceptance of the infant by the father and/or family, as applicable;

(3) Identification of the need for additional social- psychological services;

(4) Review of available community resources for mother and infant, as applicable;

(5) Counseling regarding fetal loss or infant death, if applicable; and

(6) Counseling regarding school/employment planning.

4. Health education assessment and instruction shall be provided to all patients at intervals throughout the pregnancy, based on the patient's needs and in accordance with this subchapter and as follows:

i. Initial assessment of health educational needs, which shall include, but not be limited to:

(1) Identification of general educational background;

(2) Patient's health education needs; and

(3) Previous education and experience concerning pregnancy, birth and infant care;

ii. Health education instruction, which shall be provided for all patients based on their identified health education needs, shall include at least the following:

(1) Normal course of pregnancy;

(2) Fetal growth and development;

(3) Warning signs, such as signs of pre-term labor, and identification of emergency situations;

(4) Personal hygiene;

(5) Exercise and activity;

(6) Child birth preparation, including management of labor and delivery;

(7) Preparation for hospital admission;

(8) Substance, occupational and environmental hazards;

(9) Need for continuing medical and dental care;

(10) Future family planning;

(11) Parenting, basic infant care and development;

(12) Availability of pediatric and family medical care in the community; and

(13) Normal postpartum physical and emotional changes;

iii. Health education services, which shall include guidance in decision making and in the implementation of decisions concerning pregnancy, birth and infant care; and

iv. Postpartum assessment of health education needs shall be conducted.

5. One face-to-face preventive health care contact shall be provided or arranged for after the mother's discharge from the hospital and prior to the required medical postpartum visit, as follows:

i. This contact shall include, but not be limited to:

(1) Review of the mother's health status;

(2) Review of the infant's health status;

(3) Review of mother/infant interaction;

(4) Revision of the care plan; and

(5) Provision of additional services, as indicated.

ii. The provider shall provide or arrange for one or more home visits for each high risk patient in accordance with the requirements of this chapter. (See also N.J.A.C. 10:58A-4.5(j).)

10:58A-3.8 Standards for HealthStart pediatric care certificate

(a) CNP/CNS pediatric care services shall be comprehensive, integrated and coordinated.

(b) HealthStart CNP/CNS pediatric care providers shall:

1. Directly provide preventive child health care, maintenance of complete patient history, outreach for preventive care, initiation of referrals for appropriate medical, educational, social, psychological and nutritional services, and follow-up of referrals and sick care;

2. Directly provide or arrange for non emergency room-based, 24-hour practitioner telephone access for eligible patients; and

3. Directly provide or arrange for sick care and emergency care.

10:58A-3.9 Professional requirements for HealthStart pediatric care providers

(a) All HealthStart CNP/CNS pediatric care providers shall be primary care providers who possess a knowledge of pediatrics. This may be demonstrated by certification by the New Jersey Board of Nursing, or by hospital admitting privileges in pediatrics or by documentation of a formal arrangement with a physician who is board certified in pediatrics or family practice.

10:58A-3.10 Preventive care services by HealthStart pediatric care providers

(a) HealthStart pediatric care providers shall provide preventive health visits in accordance with the recommended guidelines of the American Academy of Pediatrics and this chapter. Theschedule shall include a two to four week visit, a two month visit, a four month visit, a six month visit, a nine month visit, a 12 month visit, a 15 month visit, an 18 month visit and a 23 to 24 month visit. Each visit shall include, at a minimum, medical, family and social history, unclothed physical examination, developmental and nutritional assessment, vision and hearing screening, dental assessment, assessment of behavior and social environment, anticipatory guidance, age appropriate laboratory examinations and immunizations. Referrals shall be made as appropriate.

(b) Each provider shall provide or arrange for sick care and 24 hour telephone physician/CNP/CNS access during non-office hours. If not directly provided by the HealthStart provider, sick care and 24 hour telephone access shall be provided for each child by a single designated provider via a documented agreement. Information on care given shall be communicated to the primary HealthStart pediatric care provider. Telephone access provided exclusively via emergency room staff is not permitted. Referral to the emergency room should occur only for emergency medical care or urgent care.

(c) Case coordination, outreach and follow-up services shall include letter and/or telephone call reminders to the child's parent or guardian for preventive well-child visits and letters and/or telephone follow-up of missed appointments. Referrals for home visit services for follow-up shall be made when appropriate. For all referrals and follow-up visits, the provider shall document the completion of such referrals and/or visits. If the referral is not completed, a letter or phone call to the child's parent or guardian and/or to the referred agency shall be sent or made. All of the activity shall be recorded on the patient's chart.

10:58A-3.11 Referral services by HealthStart pediatric care providers

(a) All HealthStart CPS/CNS pediatric care providers shall make provision for consultation for specialized health and other pediatric services. Services shall include medical services, as well as social, psychological, educational and nutritional services.

1. This may include, but is not limited to: the Special Supplemental Food Program for Women, Infants and Children (WIC); Division of Youth and Family Services, Special Child Health Services Case Management Units and Child Evaluation Centers; early intervention programs; county welfare agencies/boards of social services; certified home health agencies; community mental health centers; and local and county health departments.

10:58A-3.12 Records: documentation, confidentiality and informed consent for HealthStart pediatric care providers

(a) HealthStart pediatric care providers shall have policies which protect patient confidentiality, as defined at N.J.A.C. 10:49-9.4, and provide for informed consent and document comprehensive care services in accordance with this Chapter.

(b) An individual record shall be maintained for each patient.

(c) Each record shall be confidential and shall include at least the following: history and physical examination, results of required assessments, care plan, treatment services, laboratory reports, counseling

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and health instruction provided and documentation of referral and follow-up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart pediatric services.

10:58A-3.13 HealthStart services

(a) This section applies to CNP/CNS services provided by a CNP/CNS who has a HealthStart certificate.

(b) HealthStart pediatric care provides for up to nine preventive child health visits for a child under two years of age.

1. All preventive child health visits shall be billed using the HealthStart Preventive Child Health Visit codes appropriate to the child's age at the time of visit.

2. Claims shall be submitted using Form MC-19, EPSDT/HealthStart Screening and Related Procedures.

(c) A HealthStart pediatric preventive care visit includes the following elements:

1. A comprehensive health and developmental history including assessment of both physical and mental health development;

2. A comprehensive unclothed physical exam including vision and hearing screening, dental inspection, and nutritional assessment;

3. Appropriate immunizations according to age and health history;

4. Appropriate laboratory tests, including:

i. Hemoglobin/hematocrit;

ii. Urinalysis;

iii. Tuberculin test, annually;

iv. Lead screening using blood lead level determinations between six and 12 months, at two years of age, and annually up to six years of age. At all other visits, screening shall consist of verbal risk assessment and additional blood lead level testing, if indicated; and

v. Other appropriate medically necessary procedures.

5. Health education, including anticipatory guidance; and

6. Referral for further diagnosis and treatment or follow up of all correctable abnormalities, uncovered or suspected. Referral may be to the provider conducting the screening examination, or to another provider, as appropriate.

(d) The HealthStart CNP/CNS pediatric providers shall provide case coordination, including referral for nutritional, psychological, social and other community services, as appropriate; provision or arrangement for 24-hour telephone physician/CNP/CNS access and sick care; and outreach and follow-up activities in accordance with this chapter.

SUBCHAPTER 4. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

10:58A-4.1 Introduction to the HCPCS procedure code system

(a) The New Jersey Medicaid program uses the Health Care Financing Administration's (HCFA) Common Procedure Code System (HCPCS). HCPCS follows the American Medical Association's Physicians' Current Procedure Terminology-4th Edition (CPT-4), American Medical Association, P.O. Box 10950, Chicago, IL 60610 Attention: Order Department, architecture, employing a five-position code and as many as two two-position modifiers. Unlike the CPT-4 numeric design, the HCFA-assigned codes and modifiers contain alphabetic characters. Because of copyright restrictions, the CPT-4 procedure narratives for Level I codes are not included in this manual, but are hereby incorporated by reference.

(b) HCPCS has been developed as a three-level coding system, as follows.

1. Level I codes: Narratives for these codes are found in CPT-4, which is incorporated herein by reference, as amended and supplemented. The codes are adapted from CPT-4 for use primarily by physicians, podiatrists, optometrists, certified nurse-midwives, certified nurse practitioners and clinical nurse specialists, independent clinics and independent laboratories. Level I procedure codes and fees for each, which CNP/CNSs may bill, can be found at N.J.A.C. 10:58A-4.2.

2. Level II codes: These codes are assigned by HCFA for physician and non-physician services which are not in CPT-4. Narratives for these codes, and the fees for each, can be found at N.J.A.C. 10:58A-4.3.

3. Level III codes: Level III codes identify services unique to the New Jersey Medicaid program. These codes are assigned by the Division to be used for those services not identified by CPT-4 codes or HCFA-assigned codes. Narratives for these codes, and the fees paid for each, can be are found at N.J.A.C. 10:58A-4.4.

(c) Specific elements of HCPCS codes require the attention of providers. The lists of HCPCS code numbers for independent clinic services are arranged in tabular form with specific information for a code given under columns with titles such as: "IND" "HCPCS CODE" "MOD", "DESCRIPTION", "FOLLOW-UP DAYS" and "MAXIMUM FEE ALLOWANCE". The information given under each column is summarized below:

1. Alphabetic and numeric symbols under "IND" & "MOD":

These symbols, when listed under the "IND" and "MOD" columns, are elements of the HCPCS coding system used as qualifiers or indicators ("IND" column) and as modifiers ("MOD" column). They assist the provider in determining the appropriate procedure codes to be used, the area to be covered, the minimum requirements needed, and any additional parameters required for reimbursement purposes.

i. These symbols and/or letters shall not be ignored because they reflect requirements, in addition to the narrative which accompanies the CPT/HCPCS procedure code as written in the CPT-4, for which the provider is liable. These additional requirements shall be fulfilled before reimbursement is requested.

ii. If there is no identifying symbol listed, the CPT/HCPCS procedure code narrative prevails.

IND lists alphabetic symbols used to refer the provider to information concerning the New Jersey Medicaid program's qualifications and requirements when a procedure or service code is used.

An explanation of the indicators and qualifiers used in this column is located below and in paragraph 1, "Alphabetic and numeric symbols," as follows:

N= "N" preceding any procedure code means that qualifiers are applicable to that code. These qualifiers are listed by procedure code number at N.J.A.C. 10:58A-4.5.

P = "P" preceding any procedure code indicates that prior authorization is required. The appropriate form that must be used to request prior authorization is indicated in the Fiscal Agent Billing Supplement.

HCPCS CODE= HCPCS procedure code numbers.

MOD = Alphabetic and numeric symbols: Under certain circumstances, services and procedures may be modified by the addition of alphabetic and/or numeric characters at the end of the code. The New Jersey Medicaid program's modifier codes for certified nurse practitioner/certified clinical nurse specialist services are:

AV = Certified Nurse Practitioner.

WT = Services provided to Medicaid recipients under 21 years of age under Early Periodic Screening, Diagnosis and Treatment Program (EPSDT) as set forth at N.J.A.C. 10:58A-2.10. The "WT" modifier is used by providers who are not certified as HealthStart providers, when billing for services to children up to the age of two years. Providers certified for HealthStart should consult N.J.A.C. 10:58A-3.1 through 3.18.

22 = Unusual services: When the service provided is greater than that usually required for the listed procedure, it may be identified by adding the modifier "22" to the usual procedure number.

50 = Bilateral procedures: Unless otherwise identified in the listings, bilateral procedures requiring a separate incision which are performed during the same operative session should be identified by the appropriate five-digit code describing the first procedure. The second (bilateral) procedure is identified by adding modifier "50" to the procedure number.

52 = Reduced services: Under certain circumstances, a service or procedure is partially reduced or eliminated at the practitioner's election. Under these circumstances, the service

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provided can be identified by its usual procedure number and the addition of the modifier "52," signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service.

DESCRIPTION = Code narrative:

Narratives for Level I codes are found in CPT-4.

Narratives for Level II and III codes are found at N.J.A.C. 10:58A-4.3 and 4.4, respectively.

FOLLOW-UP DAYS = Number of days for follow-up care which are considered as included as part of the procedure code for which no additional reimbursement is available.

MAXIMUM FEE ALLOWANCE = New Jersey Medicaid program's maximum reimbursement allowance. If the symbols "B.R." (By Report) are listed instead of a dollar amount, it means that additional information will be required in order to evaluate and price the service. Attach a copy of any additional information to the claim form.

(d) Listed below are general policies of the New Jersey Medicaid program that pertain to HCPCS. Specific information concerning the responsibilities of a CNP/CNS when rendering Medicaid-covered services and requesting reimbursement are located at N.J.A.C. 10:58A-1.4, Recordkeeping; 10:58A-1.5, Basis of Reimbursement; and 10:58A-2.6, Policies for the Use of Evaluation and Management Services HCPCS Codes.

1. General requirements are as follows:

i. When filing a claim, the appropriate HCPCS procedure codes must be used, in conjunction with modifiers when applicable.

ii. When billing, the provider must enter on the claim form a CPT/HCPCS procedure code as listed in this subchapter (N.J.A.C. 10:58A-4.2, 4.3, 4.4.)

iii. Date(s) of service(s) must be indicated on the claim form and in the provider's own record for each service billed.

iv. The "MAXIMUM FEE ALLOWANCE" as noted with these procedure codes represents the maximum payment for the given procedure for the CNP/CNS. When submitting a claim, the CNP/CNS must always use her or his usual and customary fee.

(1) Listed values for all surgical procedures include the surgery and the follow-up care included in the maximum fee allowance for the period (indicated in days) in the column titled "Follow-Up Days."

v. The HCPCS procedure codes that are billable in conjunction with office visit codes are listed at N.J.A.C. 10:58A-4.5, Qualifiers. (See the "N" designation in the "Indicator" column.)

vi. The use of a procedure code will be interpreted by the New Jersey Medicaid program as evidence that the practitioner personally furnished, as a minimum, the services for which it stands.

vii. For reimbursement purposes, those services with the modifier "AV" must be personally performed by the CNP/CNS who is submitting the claim.

10:58A-4.2 HCPCS procedure code numbers and maximum fee allowance schedule (Level I)

IND	HCPCS CODES	MOD	FOLLOW-UP DAYS	MAXIMUM FEE ALLOWANCE $
(a) Surgical services:				
	10060	AV		10.50
	10120	AV		15.20
	10140	AV		15.20
	10160	AV		10.50
(b) Family planning procedures:				
N	11975	AV	30	80.70
N L†	11975	AV 22	..... Direct Package Price,‡ Plus $80.70	
	30			
N	11976	AV	90	80.70
N	11977	AV	161.50	
N L†	11977	AV 22	..... Direct Package Price,‡ Plus $ 161.50	

†Level III code.Included here for convenience in preparing billings.

‡Direct Package Price is the price paid by the purchaser directly to the manufacturer without going through the wholesaler.

IND	HCPCS CODES	MOD	MAXIMUM FEE ALLOWANCE
(c) Non-complex repairs:			
Wounds	12001	AV	15.20
	12002	AV	20.00
Burns	16000	AV	13.30
	16020	AV	13.30
(d) Strapping (Any age):			
N	29105	AV	20.00
N	29125	AV	20.00
N	29130	AV	15.20
N	29200	AV	15.20
N	29220	AV	20.00
N	29240	AV	20.00
N	29260	AV	15.20
N	29280	AV	15.20
(e) Splints:			
N	29505	AV	39.90
N	29515	AV	35.20
N	29520	AV	20.00
N	29530	AV	15.20
N	29540	AV	15.20
N	29550	AV	13.30
N	29580	AV	15.20
N	29590	AV	9.50
(f) Casts, removal or repair:			
N	29700	AV	11.40
N	29705	AV	11.40
N	29710	AV	15.20
N	29715	AV	15.20
N	29720	AV	20.00
N	29730	AV	7.60
N	29740	AV	7.60
(g) Other procedures, by system:			
1. Respiratory:			
	30300	AV	13.30
	30901	AV	20.00
	30901	AV 50	50.40
	31720	AV	19.00
2. Vascular injection procedures:			
	36000	AV	30.00
N	36415	AV	1.80
3. Urinary System:			
	51010	AV	35.20
	51700	AV	17.10
	51705	AV	17.10
N	53670	AV	13.30
4. Obstetric/Gynecologic:			
N	57150	AV	13.30
	57160	AV	13.30
5. Auditory System:			
	69200	AV	10.50
(h) Laboratory Services:			
	81002		1.00
	81025		3.00
	82270		1.20
	82962		2.60
	83026		2.00
	84830		3.00
	85013		1.50
	85651		1.50

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(i) Tuberculin Testing:

	86580	4.00
	86585	4.00

(j) Immunizations:

90701	Diphtheria, Tetanus toxoids and pertussis vaccine.	16.34
	†L9070152	2.50
90702	Diphtheria and Tetanus toxoids.	3.29
	†L9070252	2.50
90703	Tetanus toxoid.	3.40
	†L9070352	2.50
90704	Mumps virus vaccine, live.	23.60
	†L9070452	2.50
90705	Measles virus vaccine, live, attenuated.	18.39
	†L9070552	2.50
90706	Rubella virus vaccine, live.	22.04
	†L9070652	2.50
90707	Measles, mumps and rubella virus vaccine, live.	39.87
	†L9070752	2.50
90712	Poliovirus vaccine, live, oral.	14.44
	†L9071252	2.50
90713	Poliomyelitis vaccine.	22.80
	†L9071352	2.50
90714	Typhoid vaccine.	3.03
	†L9071452	2.50
90717	Yellow fever vaccine.	BR
	†L9071752	2.50
90718	Tetanus and diphtheria toxoids absorbed, for adult use.	3.35
	†L9071852	2.50
90720	Diphtheria, tetanus and pertussis and Hemophilus influenza B vaccine.	BR
	†L9072052	2.50
90724	Influenza virus vaccine.	6.97
	†L9072452	2.50
N 90731	Hepatitis B vaccine.	32.89
	†L9073152	2.50
90732	Pneumococcal vaccine, polyvalent.	14.35
	†L9073252	2.50
90733	Meningococcal polysaccharide vaccine.	17.48
	†L9073352	2.50
90737	Hemophilus influenza B.	25.79
	†L9073752	2.50
90741	Immunization, passive; immune serum globulin, human.	BR
	†L9074152	2.50
90742	Specific hyperimmune serum globulin (hepatitis B, measles, pertussis, rabies, Rho(D), tetanus, vaccinic, varicella-zoster).	BR
	†L9074252	2.50

†Administration of serum only. These "52" injection codes are Level III codes, but are given here for the convenience of the individual preparing billings. See N.J.A.C. 10:58A-4.4(b).

(k) Infusion Therapy (Excluding Allergy, Immunization and Chemotherapy:

N	90780 AV	$38 per hour
N	90781 AV	$38 per hour

(l) Therapeutic or Diagnostic Injections:

	90782 AV	2.50
	90784 AV	2.50
	90788 AV	2.50

(m) Psychiatry:

N P	90801 AV	24.70
N P	90830 AV	24.70
N P	90843 AV	12.40
N P	90844 AV	24.70
N P	90847 AV	24.70
N P	†90847 AV 22	30.40
	90862 AV	13.30
N P	90887 AV	12.40
LNP	†H5025 AV	5.70

†Level III code, listed here for practitioner's convenience. (For narrative description of this procedure, see N.J.A.C. 10:58A-4.4(h).)

(n) Audiological function tests:

	92552 AV	11.00
	92553 AV	14.00
	92567 AV	5.00

(o) Cardiovascular services:

	92950	30.40
	93005	11.00

(p) Pulmonary services:

	94010	18.00

(q) Chemotherapy:

	96400	3.80
	96408	13.30
	96410	29.90
	96412	29.90
	96414	13.30
	96420	13.30
	96422	26.60
	96423	13.30
	96425	13.30
	96520	13.30
	96530	13.30

(r) Evaluation and Management Services:

1. Office and Other Outpatient Services:

New patient:

N	99201 AV	13.30
N	99202 AV	13.30
N	99203 AV	16.20
N	99204 AV	16.20

Established patient:

N	99212 AV	13.30
N	99213 AV	13.30
N	99214 AV	13.30

2. Hospital inpatient services:

Initial hospital care, new or established patient

N	99221 AV	16.20

Subsequent hospital care:

N	99231 AV	13.30
N	99232 AV	13.30

3. Hospital emergency department:

Emergency department services, new or established patient

N	99281 AV	6.70
N	99282 AV	6.70
N	99283 AV	6.70
N	99284 AV	6.70

4. Nursing home visit:

Comprehensive nursing facility assessments, new or established patient:

N	99301 AV	16.20
N	99302 AV	16.20
N	99303 AV	16.20

Subsequent nursing facility care, new or established patient:

N	99311 AV	13.30
N	99312 AV	13.30

Pre-Admission Screening and Annual Resident Review:

	99313 AV	14.00
	99333 AV	14.00
N L	†W9848 AV	30.00
N L	†W9849 AV	30.00

†Level III code; included here for convenience in billing.

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5. Domiciliary, rest home (for example, boarding home), or custodial care services:

New patient

N	99321 AV	16.20
N	99322 AV	16.20

Established patient

N	99331 AV	13.30
N	99332 AV	13.30

6. Home visit:

New patient

N	99341 AV	13.30
N	99342 AV	13.30

Home visit, cont.

Established patient

N	99351 AV	13.30
N	99352 AV	13.30

7. Newborn care:

N	99431 AV	21.90

8. Preventive medicine:

New patient

N	99382 AV	16.20
N	99383 AV	16.20
N	99384 AV	16.20
N	99385 AV	16.20
N	99386 AV	16.20
N	99387 AV	16.20

Established patient

N	99392 AV	16.20
N	99393 AV	16.20
N	99394 AV	16.20
N	99395 AV	16.20
N	99396 AV	16.20
N	99397 AV	16.20

10:58A-4.3 HCPCS procedure codes and maximum fee allowance schedule for Level II codes and narratives

(a) CNP/CNS Administered Drugs:

IND	HCPCS CODES	MOD	MAXIMUM FEE ALLOWANCE $
	J0690	Cefazolin 500 mg	1.92
	J0696	Ceftriaxone 250 mg	10.24
	J1100	Dexamethasone 4 mg	0.80
	J1200	Diphenhydramine 50 mg	0.55
	J2550	Promethazine 50 mg	0.42
	J2680	Fluphenazine decanoate 25 mg	9.50
	J2790	RhoGRAM, Rho (D) Immune Globulin (Human) Single dose: Micro-Dose.	20.40
	J2790 22	RhoGRAM, Rho (D) Immune Globulin (Human) (22-Services greater than usual): Full dose.	72.07
	J9000	Doxorubicin 10 mg	42.00
	J9010	Doxorubicin 50 mg	195.50
	J9020	Asparaginase 10,000 units	50.36
	J9031	BCG live vaccine 27 mg	152.13
	J9040	Bleomycin sulfate 15 units	255.08
	J9045	Carboplatin 50 mg	72.01
	J9060	Cisplatin powder or solution 10 mg	30.33
	J9070	Cyclophosphamide 100 mg	4.91
	J9100	Cytarabine 100 mg	6.72
	J9130	Dacarbazine 100 mg	12.00
	J9190	Fluorouracil 50 mg	0.18
	J9217	Lupron 7.5 mg	451.25
	J9230	Mechlorethamide HCl 10 mg	10.10
	J9240	Medroxyprogesterone 100 mg	9.05
	J9240 22	Medroxyprogesterone 400 mg	31.50
	J9260	Methotrexate sodium 50 mg	4.75
	J9280	Mitomycin 5 mg	119.08
	J9360	Vinblastine sulfate 1 mg	3.25
	J9370	Vincristine sulfane 1 mg	27.50

10:58A-4.4 HCPCS procedure codes and maximum fee allowance schedule for Level III codes and narratives

(a) CNP/CNS Administered Drugs:

IND	HCPCS CODES	MOD	MAXIMUM FEE ALLOWANCE $
	J2550	Promethazine 50 mg	0.42
	J2680	Fluphenazine Decanoate 25mg	9.50
	J9240	Medroxyprogesterone 100 mg	9.05
	J9240 22	Medroxyprogesterone 400 mg	31.50
	W9336	Medroxyprogestrone Acetate 150 mg	36.90
	W9337	Cephradine 250 mg	2.34
	W9339	Lupron 3.75 mg	360.63
	W9343	Lupron Depot Pediatric 7.5 mg	451.25
	W9344	Lupron Depot Pediatric 11.25 mg	811.25
	W9345	Lupron Depot Pediatric 15 mg	902.50

(b) Immunizations: See N.J.A.C. 10:58A-4.5(c).

N W9096	Hepatitis B immunoprophylaxis with Recombivax HB, 0.25 ml dose.	17.46
N W9096 22	Hepatitis B immunoprophylaxis with Recombivax HB,0.5 ml dose.	32.79
W9096 52 22	Administration of vaccine only.	2.50
N W9097	Hepatitis B immunoprophylaxis with Recombivax HB,0.25 ml dose.	17.46
W9097 52	Administration of vaccine only.	2.50
N W9098	Hepatitis B immunoprophylaxis with Recombivax HB,0.5 ml dose.	32.79
W9098 52	Administration of vaccine only.	2.50
N W9099	Hepatitis B immunoprophylaxis with Recombivax HB, 1.0 ml dose.	63.57
W9099 52	Administration of vaccine only.	2.50
N W9333	Hepatitis B immunoprophylaxis with Energix-B,0.5 ml dose.	27.88
W9333 52	Administration of vaccine only.	2.50
N W9334	Hepatitis B immunoprophylaxis with Energix-B,0.5 ml dose.	27.88
W9334 52	Administration of vaccine only.	2.50
N W9335	Hepatitis B immunoprophylaxis with Energix-B,0.5 ml dose.	62.09
W9335 52	Administration of vaccine only.	2.50
W9338	Immunization, active; Tetramune	30.27
W9338 52	Administration of vaccine only.	2.50
†L 90701 52	Diphtheria, Tetanus toxoids and pertussis vaccine. Administration of vaccine only.	2.50
†L 90702 52	Diphtheria and Tetanus toxoids. Administration of vaccine only.	2.50
†L 90703 52	Tetanus toxoid. Administration of vaccine only.	2.50
†L 90704 52	Mumps virus vaccine, live. Administration of vaccine only.	2.50
†L 90705 52	Measles virus vaccine, live, attenuated. Administration of vaccine only.	2.50
†L 90706 52	Rubella virus vaccine, live. Administration of vaccine only.	2.50
†L 90707 52	Measles, mumps and rubella virus vaccine, live. Administration of vaccine only.	2.50
†L 90712 52	Poliovirus vaccine, live, oral. Administration of vaccine only.	2.50
†L 90713 52	Poliomyelitis vaccine. Administration of vaccine only.	2.50
†L 90714 52	Typhoid vaccine. Administration of vaccine only.	2.50
†L 90717 52	Yellow fever vaccine. Administration of vaccine only.	2.50
†L 90718 52	Tetanus and diphtheria toxoids absorbed, for adult use. Administration of vaccine only.	2.50

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†L 90720 52	Diphtheria, tetanus and pertussis and Hemophilus influenza B vaccine. Administration of vaccine only.	2.50
†L 90724 52	Influenza virus vaccine. Administration of vaccine only.	2.50
†L 90731 52	Hepatitis B vaccine. Administration of vaccine only.	2.50
†L 90732 52	Pneumococcal vaccine, polyvalent. Administration of vaccine only.	2.50
†L 90733 52	Meningococcal polysaccharide vaccine. Administration of vaccine only.	2.50
†L 90737 52	Hemophilus influenza B. Administration of vaccine only.	2.50
†L 90741 52	Immunization, passive; immune serum globulin, human. administration of vaccine only.	2.50
†L 90742 52	Specific hyperimmune serum globulin (hepatitis B, measles, pertussis, rabies, Rho(D), tetanus, vaccinic, varicella-zoster). Administration of vaccine only.	2.50

(c) Intra-uterine devices:

W0001 AV	Supplying and inserting the intrauterine device "Paragard" by a CNP/CNS, including the post insertion visit.	172.00
W0002 AV	Supplying and inserting the intrauterine device "Progestasert" by a CNP/CNS, including post insertion visit.	110.20
W0004 AV	Removal of an IUD by a CNP/CNS, followed at the same visit by the insertion of the IUD "Paragard" and including the post insertion visit.	185.20
W0008 AV	Removal of an IUD by a CNP/CNS followed at the same visit by the insertion of the IUD "Progestasert" and including the post insertion visit.	123.50

(d) Norplant System: See N.J.A.C. 10:58A-4.5(a).

	Direct package price
11975 AV 22	plus $80.70
11977 AV 22	plus $ 161.50

NOTE: The Level I procedure codes for Norplant System are found at N.J.A.C. 10:58A-3.2(b).

(e) EPSDT Screening Examinations (See N.J.A.C. 10:58A-2.10 for EPSDT requirements.) (See N.J.A.C. 10:58A-4.5(m)).

W9820 AV	Early and Periodic Screening, Diagnosis and Treatment (EPSDT) through age 20.	$ 18.00

The following age-specific HCPCS procedure codes apply to EPSDT screening services:

W9060 WT AV	EPSDT-under six weeks	$ 18.00
W9061 WT AV	EPSDT-six weeks to three months	18.00
W9062 WT AV	EPSDT-three months to five months	18.00
W9063 WT AV	EPSDT-five months to 8 months	18.00
W9064 WT AV	EPSDT-8-11 months	18.00
W9065 WT AV	EPSDT-11-14 months	18.00
W9066 WT AV	EPSDT-14 -17 months	18.00
W9067 WT AV	EPSDT-17-20 months	18.00
W9068 WT AV	EPSDT-20-24 months	18.00

For explanation of EPSDT requirements, refer to W9820 above, and to N.J.A.C. 10:58A-2.6.

(f) HealthStart Pediatric Preventive Care:

1. HealthStart Pediatric Preventive Care codes represent visits based on an infant's age according to the following schedule:

HCPCS CODE	DESCRIPTION	MAXIMUM FEE ALLOWANCE
W9060 AV	Under six weeks	26.00
W9061 AV	Six weeks to three months	26.00
W9062 AV	Three months to five months	26.00
W9063 AV	Five months to eight months	26.00
W9064 AV	Eight months to 11 months	26.00
W9065 AV	11 months to 14 months	26.00
W9066 AV	14 months to 17 months	26.00
W9067 AV	17 months to 20 months	26.00
W9068 AV	20 months to 24 months	26.00

2. Claims for HealthStart Preventive Care visits shall include a completed Health Insurance Claim Form, 1500 N.J., and a HealthStart Preventive Child Health Form.

(g) Psychiatry: (See N.J.A.C. 10:58A-4.5(f)).

N P	†90847 AV 22	30.40
	90862 AV	13.30
N P	90887 AV	11.70
L N P	†H5025 AV	5.70

10:58A-4.5 HCPCS Procedure Codes-Qualifiers

HCPCS MOD	DESCRIPTIONS
(a) Surgical Services, Norplant System:	
11975 AV	QUALIFIER: Reimbursed for the insertion or reinsertion of the "Norplant System" (six levonorgestrel implants) and the post insertion visit when provided in a hospital setting, when the CNP/CNS bills for the service. When using this procedure code, the CNP/CNS will not be reimbursed for the cost of the kit. The supplier of the kit to the CNP/CNS will be reimbursed directly for the cost of the kit.
11975 AV 22	QUALIFIER: The maximum fee allowance includes the cost of the kit supplied to the CNP/CNS, the insertion of the "Norplant System" (six levonorgestrel implants) and the post insertion visit. NOTE: The "22" modifier indicates the inclusion of the cost of the kit.
11976 AV	QUALIFIER: The maximum fee allowance is reimbursed for the removal of the "Norplant System" (six levonorgestrel implants) and for the post removal visit.
11977 AV	QUALIFIER: The maximum fee allowance is reimbursed for the removal and reinsertion of the "Norplant System" (six levonorgestrel implants) and for the post-removal/reinsertion visit.
11977 AV 22	QUALIFIER: The maximum fee allowance is reimbursed for the removal and reinsertion of the "Norplant System" (six levonorgestrel implants) and for the post-removal/reinsertion visit.

NOTE: Modifier "22" indicates that the billing includes the cost of the NPS kit.

(b) Laboratory services:

36415	QUALIFIER: Once per visit, per patient. Not applicable if laboratory study, in any part, is performed by the office staff of the CNP/CNS or by him or herself. When the clinical laboratory test is performed on site, the venipuncture is not reimbursable as a separate procedure; its cost is included within the reimbursement for the lab procedure.

(c) Immunizations:

N W9096	QUALIFIER: This code applies only to newborns of HBsAg negative mothers.
N W9096 22	QUALIFIER: This code applies only to newborns of HBsAg positive mothers.
N W9097	QUALIFIER: This code applies only to high risk recipients under 11 years of age (exclusive of newborns).
N W9098	QUALIFIER: This code applies only to high risk recipients 11-19 years of age.
N W9099	QUALIFIER: This code applies only to high risk recipients over 19 years of age.

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N W9333 QUALIFIER: This applies only when immunizing newborns.

N W9334 QUALIFIER: This applies only to high risk recipients under 11 years of age (exclusive of newborns).

N W9335 QUALIFIER: This applies only to high risk recipients over 11 years of age.

90731 QUALIFIER: This code applies only to the treatment of newborns with a history of perinatal exposure to hepatitis B virus.

90741 QUALIFIER: Prior authorization from the Medical Consultant at the Medicaid District Office is required.

90742 QUALIFIER: Prior authorization from the Medical Consultant at the Medicaid District Office is required.

(d) Infusion therapy (excluding allergy, immunizations and chemotherapy):

90780 AV QUALIFIER: Not to be used for routine IV drug injection or infusion. Reimbursement is contingent upon the required medical necessity, hand written chart documentation including time and indication of the physician's presence with the patient to the exclusion of his or her other duties.

90781 AV QUALIFIER: Not to be used for routine IV drug injection or infusion. Reimbursement is contingent upon the required medical necessity, hand written chart documentation including time and indication of the physician's presence with the patient to the exclusion of his or her other duties.

(e) Therapeutic or diagnostic injections:

There are no qualifiers for therapeutic or diagnostic injections.

(f) Mental health services:

QUALIFIER: Only under exceptional circumstances will more than one mental health procedure be reimbursed per day for the same recipient by the same CNP/CNS, group of CNP/CNSs, shared health facility, or providers sharing a common record. When circumstances require more than one mental health procedure, the medical necessity for the services shall be documented in the patient's chart.

H5025 AV Psychotherapy, group-90 minute session 5.70

QUALIFIER: Maximum of eight (8) persons per group, including the recipient for whom the service is billed. This code requires the direct professional participation of the practitioner for a minimum of 90 minutes, of which 10 minutes can be used for documentation.

90801 AV 24.70

QUALIFIER: This code requires for reimbursement purposes a minimum of 50 minutes of direct personal clinical involvement with the patient or family member. No more that one claim is reimbursable per the same patient, per the same physician or practitioner, per year.

90843 AV Individual Psychotherapy -25 minute session 12.40

QUALIFIER: This code requires, for reimbursement purposes. a minimum of 25 minutes of direct personal clinical involvement with the patient or family member.

90844 AV Individual Psychotherapy -50 minute session 24.70

QUALIFIER: This code requires, for reimbursement purposes, a minimum of 50 minutes of direct personal clinical involvement with the patient or family member.

90847 AV Family Therapy -50 minute session 24.70

QUALIFIER: This code requires, for reimbursement purposes, a minimum of 50 minutes of direct personal clinical involvement with the patient or family member.

90847 AV 22 Family Therapy -80 minute session 30.40

QUALIFIER: This code requires, for reimbursement purposes, a minimum of 80 minutes of direct personal clinical involvement with the patient or family member.

90887 AV Family Conference -25 minute session 12.40

QUALIFIER: This code requires, for reimbursement purposes, a minimum of 25 minutes of direct personal clinical involvement with the patient or family member. The CPT narrative otherwise remains applicable.

(g) Pre-Admission Screening/ Annual Resident Review (PAS/ARR)

W9848 $ 30.00

W9849 30.00

(h) Evaluation and management services:

99201,99202

Initial Visit

i. QUALIFIER: An Initial Office Visit, or an Initial Residential Health Care Visit, is limited to a single visit. Future use of this category of codes will be denied when the recipient is seen by the same practitioner, group of practitioners, or member of the same shared health care facility.

ii. QUALIFIER: HCPCS procedure codes 99201 and 99202 are exceptions to the requirements outlined in the qualifier for the initial visit. For codes 99201 and 99202, the provider is expected to follow the qualifier applied to routine visit or follow-up care visit for reimbursement purposes.

iii. QUALIFIER: As described at N.J.A.C. 10:58A-1.4, Evaluation and Management services pertain to patients presenting with symptoms, and as such, exclude Preventive Health Care. Preventive services for patients including newborns through persons 20 years of age are billed under EPSDT, when the procedure requirements are met, as described at N.J.A.C. 10:58A-2.10.Preventive Health Care for adults is described below, at Section (j) of this Chapter.

99203,99204

Office or other outpatient services: new patient

99221

Hospital inpatient services: initial hospital care;

iv. QUALIFIER: When reference is made in the CPT-4 manual to the procedures listed above, the intent of Medicaid is to consider this service as the Initial Visit.

v. QUALIFIER: Reimbursement for an initial office visit or initial residential health care facility visit will be disallowed, if a preventive medicine service, EPSDT examination or office consultation were billed within a twelve month period by a practitioner, group, shared health care facility, or practitioners sharing a common record.

vi. QUALIFIER: In reference to a nursing facility or hospital, the Initial Visit concept will still apply for reimbursement purposes. Subsequent readmissions to the same facility may be reimbursed as Initial Visits, if the readmission occurs more than 30 days from a previous

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discharge from the same facility by the same provider. When the readmission occurs within 30 days from a previous discharge, the provider shall bill the relevant HCPCS procedure codes specified under the headings Subsequent Hospital Care or Subsequent Nursing Facility Care.

vii. QUALIFIER: Initial Hospital Visit during a single admission will be disallowed to the same practitioner, group, shared health care facility, or practitioners sharing a common record who submit a claim for a consultation and transfer the patient to their service.

2. Follow-up visit:

99212,99213,99214

Office or other outpatient services: established patient;

99231,99232

Hospital inpatient services: subsequent hospital care;

99313

Nursing facility services: subsequent nursing facility care;

99333

Domiciliary, rest home or custodial care services: established patient; and

99351, 99352

Home visit.

i. QUALIFIER: When reference is made in the CPT manual to the services specified above, the intent of Medicaid is to consider this service as the Routine Visit or Follow-Up Care visit. The setting could be office, hospital, nursing facility or residential health care facility.

(i) Preventive Medicine Services: Annual Health Maintenance Examination

New Patient	Established Patient
99382 AV	99392 AV
99383 AV	99393 AV
99384 AV	99394 AV
99385 AV	99395 AV
99386 AV	99396 AV
99387 AV	99397 AV

QUALIFIER: Preventive medicine services codes (new patient) 99382, 99383, 99384, 99385, 99386, and 99387 may only be billed once within 12 months when the recipient is seen by the same practitioner, group of practitioners sharing a common record, or member(s) of a shared health care facility. These codes will also be automatically denied for payment when used following an EPSDT examination (procedure code W9820) performed within the preceding 12 months.

QUALIFIER: Preventive medicine services codes (established patient) 99392, 99393, 99394, 99395, 99396 and 99397 may be used only once in a 12-month period for any individual over 2 years of age. For well-child care provided to children under the age of two, it is suggested that the provider bill for an EPSDT examination.

QUALIFIER: Preventive medicine services code 99392 may be used up to 5 times during the patient's first year of life and up to 3 times during the patient's second year of life, respectively, in accordance with the periodicity schedule of preventive visits recommended by the American Academy of Pediatrics. This code does not apply to children under 2 years of age participating in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) or Pediatric HealthStart program. EPSDT and the Pediatric HealthStart providers bill for these services using the program appropriate codes W9060-W9068 or W9060WT-W9068WT.

2. Preventive medicine services codes (established patient) 99392, 99393, 99394, 99395, 99396 and 99397 may be used only once in a 12-month period for any individual over 2 years of age. For well-child care provided to children under the age of two, it is suggested that the provider bill for an EPSDT examination.

3. Preventive medicine services code 99391 and 99392 may be used up to five times during the patient's first year of life and up to three times during the patient's second year of life respectively, in accordance with the periodicity schedule of preventive visits recommended by the American Academy of Pediatrics. These codes do not apply to children under two years of age participating in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) or Pediatric HealthStart program. EPSDT and the Pediatric HealthStart providers bill for these services using the program appropriate codes W9060-W9068 or W9060WT-W9068WT.

(j) Home services and house calls:

99343,99353	35.00	35.00

The "House call" code does not distinguish between specialist and non-specialist. These codes do not apply to residential health care facility or nursing facility setting. These codes refer to a physician visit limited to the provision of medical care to an individual who would be too ill to go to a physician's office and/or is "home bound" due to his/her physical condition. When billing for a second or subsequent patient treated during the same visit, the visit should be billed as a home visit.

Home services and house calls, cont.

99341,99342	13.30	13.30
99351,99352	13.30	13.30

For purposes of Medicaid reimbursement, these codes apply when the provider visits Medicaid recipients in the home setting and the visit does not meet the criteria specified under House Call listed above.

(k) Emergency room services:

Practitioner's Use of Emergency Room Instead of Office:

99211,99212,99213,
99214

When a practitioner sees his or her patient in the emergency room instead of his or her office, the practitioner shall use the same codes for the visit that would have been used if seen in the physician's office (99211, 99212, 99213, 99214 or 99215 only). Records of that visit should become part of the notes in the office chart.

99281,99282,99283,
99284

Emergency room visit (Refer to the CPT-4.) Hospital-based emergency room physicians:

When patients are seen by hospital-based emergency roompractitioners who are eligible to bill the Medicaid program,the appropriate HCPCS code is used. The "Visit" codesare limited to 99281, 99282, 99283, 99284 and 99285.

(l) Newborn care:

99431	Routine hospital newborn care-"Well" baby	21.90
	Newborn care-"Sick" baby	
99221	Initial hospital care.	16.20
99231,99232	Subsequent hospital care.	13.30,13.30

QUALIFIER: For reimbursement purposes, code 99431 requires as a minimum routine newborn care by a physician other than the physician(s) rendering maternity service, including complete initial and complete discharge physical examination, conference(s) with the patient(s). This must be documented in the newborn's medical record.

(For sick babies, use appropriate hospital care code.)

(m) W9820 AV Early and Periodic Screening, Diagnosis and Treatment (EPSDT) through age 20. $18.00

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QUALIFIER: Procedure code W9820 shall be used only once for the same patient during any 12 month period by the same practitioner(s) sharing a common record.

QUALIFIER: Reimbursement for code W9820 is contingent upon the submission of both a completed "Report and Claim for EPSDT/HEALTHSTART Screening and Related Procedures (MC-19) and the appropriate claim form within 30 days of the date of service. In the absence of a completed MC-19 form, reimbursement will be to the level of an annual health maintenance examination, that is $16.00.

APPENDIX

FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter but is not reproduced in the New Jersey Administrative Code. When revisions are made to the Fiscal Agent Billing Supplement, replacement pages shall be distributed to providers and filed with the Office of Administrative Law.

For a copy of the Fiscal Agent Billing Supplement, write to:

Unisys Corporation
CN-4801
Trenton, New Jersey 08650-4801

or contact:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN-049
Trenton, New Jersey 08625-0049

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program Qualifying Standards

Adopted Amendment: N.J.A.C. 2:32-2.22

Proposed: March 20, 1995 at 27 N.J.R. 969(a).

Adopted: May 9, 1995 by the Sire Stakes Board of Trustees, Bruce A. Sterns, Executive Director; and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Filed: May 10, 1995 as R.1995 d.276, **without change**.

Authority: N.J.S.A. 5:5-91.

Effective Date: June 5, 1995.

Expiration Date: May 13, 1997.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the New Jersey Sire Stakes, Division of Markets, New Jersey Department of Agriculture, are dictated by Sire Stakes Program Establishment Act, N.J.S.A. 5:5-91 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

2:32-2.22 Qualifying standards

(a) All starters in the New Jersey Sire Stakes Pari-mutuel Division must meet the following qualifying standards in their last start on a fast track and be eligible at time of entry.

1. The New Jersey Sire Stakes qualifying times will be as follows:

	One Mile Track	5/8 Mile Track	½ Mile Track
Two-Year-Old Trot	2:05	2:06	2:07
Three-Year-Old Trot	2:03	2:04	2:05
Two-Year-Old Pace	2:02	2:03	2:04
Three-Year-Old Pace	2:00	2:01	2:02

NOTE: These times are not always the same as track qualifying standards.

2. Horses making a break in a qualifying race or in the next purse race following a qualifying race must requalify with the exception of those who were not required to qualify. All other qualifying standards at the track where the race is being conducted must be adhered to.

3.-4. (No change.)

(b) (No change.)

BANKING

(b)

THE COMMISSIONER

Organization of the Department of Banking

Adopted New Rules: N.J.A.C. 3:3-1

Adopted: May 3, 1995, by Elizabeth Randall, Commissioner, Department of Banking.

Filed: May 3, 1995 as R.1995 d.272.

Authority: N.J.S.A. 17:1-8.1, 47:1A-2, and Executive Order No. 11(1974).

Effective Date: May 3, 1995.

Expiration Date: March 6, 2000.

These proposed new rules are organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and are effective upon filing.

Executive Order No. 27 Statement

These adopted new rules concerning the Department's organization are not subject to Federal requirements.

Full text of the adopted new rules follows:

SUBCHAPTER 1. MISSION OF THE DEPARTMENT

3:3-1.1 Mission statement of the Department

(a) It is the mission of the Department of Banking to create an environment that:

1. Encourages a broad range of financial products;
2. Ensures the integrity of financial services; and
3. Spurs economic growth, jobs and consumer confidence.

(b) This mission will be accomplished by Department employees operating in an environment that values innovation, creativity, collaboration, flexibility, excellence and public service.

3:3-1.2 Organization of the Department

(a) The Department of Banking is organized as indicated in the Organizational Chart (see Appendix, incorporated herein by reference) and the functions and responsibilities of its officers are as follows:

1. The Commissioner of Banking is the Chief Executive Officer of the Department and oversees all functions of the Department of Banking.

2. The Deputy Commissioner reports to the Commissioner. The Deputy Commissioner oversees general operations of the Department as assigned by the Commissioner. The Division Directors of the Divisions of Administration, Licensees and Depositories report to the Deputy Commissioner.

3. The Chief of Staff reports to the Commissioner. The Director of Legislative and Public Affairs, the Regulatory Officer and the Research Economist report to the Chief of Staff.

4. The Division of Licensees consists of three sections:

i. Enforcement: The Chief of the Enforcement Unit is responsible for supervision of investigation and enforcement of rules pertaining to licensees regulated by the Department.

ii. Licensees: The Chief Examiner supervises surveillance of licensees, managing examiners and licensing services of all non-depository entities licensed by the Department; and

iii. Consumer Services: The Chief of Investigations of this unit is responsible for supervision of investigators who handle consumer complaints regarding non-depository licensees;

5. The Division of Administration consists of three sections: Human Relations, Fiscal and Data Processing.

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i. Human Relations: The Chief of the Human Relations Unit is responsible for hiring and discipline of Department staff pursuant to rules of the Department of Personnel;

ii. Fiscal: The Chief of the Fiscal Unit is responsible for expenditures pursuant to the Department budget;

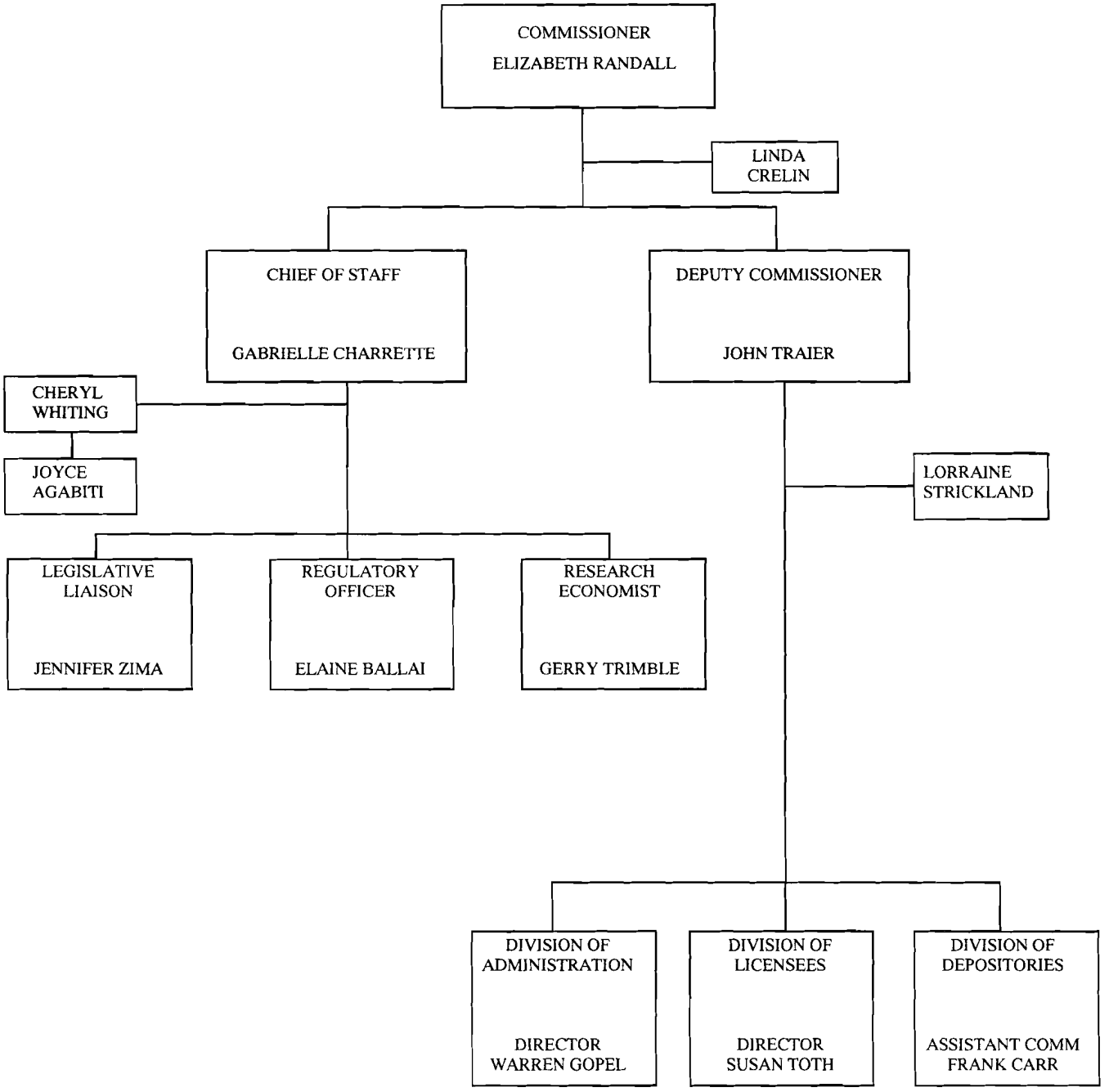
iii. The Chief of the Data Processing Unit supervises the Management Information staff and provision of computer services for the Department.

6. The Division of Depositories consists of two sections: Applications and Examinations.

i. Applications: The Chief of the Applications Unit advises and supervises staff who process applications for depositories involving bank charters.

ii. Examinations: The Chief of the Examinations Unit supervises a staff of Review Examiners, Managing Examiners and Field Examiners who examine the financial activities of depository institutions. The Chief of this unit also supervises the staff person responsible for policy development and the Community Reinvestment Act compliance officer.

APPENDIX



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COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Maintenance of Hotels and Multiple Dwellings Inspections

Adopted Amendment: N.J.A.C. 5:10-1.10

Proposed: April 3, 1995 at 27 N.J.R. 1345(a).

Adopted: May 9, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: May 12, 1995, as R.1995 d.279, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:13A-13.

Effective Date: June 5, 1995.

Expiration Date: August 26, 1998.

Summary of Hearing Officer Recommendations and Agency Response:

A public hearing on the proposed amendment was held on April 24, 1995 at 101 South Broad Street, Trenton, New Jersey. Michael L. Ticktin, Esq., Chief of Legislative Analysis and Administrative Practice of the Department of Community Affairs presided. No members of the public appeared to testify. No recommendations based on the hearing could therefore be made by the hearing officer. The hearing record can be reviewed by contacting Michael L. Ticktin, Esq., Chief, Legislative Analysis, Department of Community Affairs, CN 802, Trenton, NJ 08625-0802.

Summary of Public Comments and Agency Responses:

A comment was received from Matthew B. Shapiro, First Vice-President of the New Jersey Tenants Organization.

COMMENT: It is unclear from the text of the proposed amendment when the next cyclical inspection will be conducted in those cases in which a municipal inspection is accepted in lieu of a current cyclical inspection. The next cyclical inspection should be five years from the date of the municipal inspection, not five years from the present.

RESPONSE: The commenter is correct in his understanding that the inspection cycle for the building should be adjusted so that the next inspection for which a fee is charged should take place five years after the municipal inspection that is being accepted in lieu of a current inspection. The intention of the statutory amendment that this rule implements was that a building owner not be charged for a cyclical inspection when the last inspection for which there was a charge, and which was made to the same standards, took place less than five years previously. It was certainly not intended that a building not be subject to an inspection for which a fee is charged for a period of more than five years. The text will be amended at N.J.A.C. 5:10-1.10(i) to make this clear.

Summary of Agency-Initiated Changes:

In response to comments submitted by a member of the Hotel and Multiple Dwelling Health and Safety Board, the Department has added language at N.J.A.C. 5:10-1.10(j) that provides for the Bureau of Housing Inspection to request notice from municipalities whenever any municipal maintenance code that it has on file, and that conforms to the maintenance standards established in this chapter, is amended or is no longer in effect.

The Department cannot comply with recommendations from another member that it require municipalities to submit copies of ordinances and that it exempt owners from municipal fees and inspections, because it does not have authority to issue such directives to municipalities.

Executive Order No. 27(1994) Statement

No Executive Order No. 27(1994) analysis is required because these rules are not being adopted, readopted or amended under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

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

5:10-1.10 Bureau inspections

(a)-(g) (No change.)

(h) The Bureau shall waive the inspection fee for any unit that has been thoroughly inspected within the previous 12-month period under a municipal ordinance requiring inspection upon change of occupancy in accordance with the maintenance standards established herein if the unit has had a municipal certificate of occupancy issued as a result of that inspection.

1. The owner shall provide the Bureau with a copy of each municipal certificate of occupancy issued within 15 days after the date of the start of the inspection required under this chapter.

2. If requested to do so by the Bureau, the owner shall, within 10 business days of the owner's receipt of the Bureau's request therefor, provide the Bureau with a copy of the municipal maintenance code used for the certificate of occupancy inspection. If the owner does not provide a copy of the municipal maintenance code within this period of time, the fee for the unit for which a municipal certificate of occupancy has been issued shall not be waived.

3. Upon a finding that the requirements of the municipal maintenance code are substantially identical to the requirements of this chapter, and that the inspection occurred within the previous 12 months, the owner shall be notified of the reduced fee.

4. Upon a finding that the requirements of the municipal maintenance code or ordinance are not substantially identical to the requirements of this chapter, the owner shall be so notified, and the fee in the amount originally assessed shall be due and payable.

(i) Upon a finding by the Bureau that a building has been thoroughly inspected prior to resale since the most recent inspection made in accordance with this chapter, that the inspection was conducted by the municipality in accordance with the maintenance standards established in this chapter and that a municipal certificate of occupancy has been issued, the Bureau shall accept that inspection in lieu of a current inspection ***and shall not conduct another cyclical inspection of the building until five years shall have elapsed since the date of that municipal inspection***.

1. The owner shall provide the Bureau with a copy of the municipal certificate of occupancy not less than 90 days prior to the fifth anniversary of the date on which the last cyclical inspection was performed. If the copy of the municipal certificate of occupancy is not submitted, or is submitted later than the date 90 days prior to the fifth anniversary of the date on which the last cyclical inspection was performed, the municipal inspection prior to resale shall not be accepted in lieu of a current inspection.

2. If requested to do so by the Bureau, the owner shall, within 10 business days of the owner's receipt of the Bureau's request therefor, provide the Bureau with a copy of the municipal maintenance code used for the certificate of occupancy inspection. If a copy of the municipal maintenance code is not provided within this period of time, the resale inspection shall not be accepted in lieu of a current inspection.

3. Upon a finding that the requirements of the municipal maintenance code are substantially identical to the requirements of this chapter, the inspection prior to sale shall be accepted in lieu of the current inspection.

(j) In order to facilitate administration of subsections (h) and (i) above, the Bureau shall maintain a current file of municipal ordinances establishing certificate of occupancy and maintenance code requirements applicable to hotels and/or multiple dwellings and shall review all such ordinances and maintain a list of ordinances reviewed, indicating whether each maintenance code is or is not substantially identical in its requirements to the maintenance standards set forth in this chapter. ***The Bureau shall request those municipalities that have adopted codes substantially identical to the maintenance standards of this chapter to notify the Bureau whenever those codes are amended or are no longer in effect.*** Copies of this list shall be made available upon request, without charge, to owners of hotels and multiple dwellings and other interested persons.

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(a)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Local Housing Authority and Municipal Redevelopment Agency Training Program

Adopted New Rules: N.J.A.C. 5:16

Proposed: December 19, 1994 at 26 N.J.R. 4867(a).

Adopted: April 21, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: April 28, 1995 as R.1995 d.259, **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. 40A:12A-45 and 49.

Effective Date: June 5, 1995.

Expiration Date: June 5, 2000.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons, agencies and organizations: Janice Vitale, Housing Authority of Brick Township; Richard Keefe, New Jersey Association of Housing and Redevelopment Authorities (NJAHRA); Louis Riccio, New Jersey National Association of Housing and Redevelopment Officials (NJNAHRO); William Snyder, Secaucus Housing Authority; Dom Facchini, Weehawken Housing Authority; and Thomas O. Lucas, Harrison Housing Authority.

As most of the commenters raised similar concerns, the comments are summarized by subject matter.

COMMENT: Commenters requested clarification of the term "board vacancy" as referenced at N.J.A.C. 5:16-3.2(a). The commenters questioned whether a vacancy occurs at the end of a term when a reappointment is not made and a commissioner continues as a "holdover".

RESPONSE: The Department noted that N.J.S.A. 40A:12A-17 may create confusion by specifying that members serve for five year terms and until their respective successors have been appointed and qualified. By definition, a vacancy occurs upon resignation of a member or when a term has expired. A member who is a "holdover" is sitting in a seat after expiration of the term associated with that seat, and therefore holds no right to the office and can be replaced at any time.

The Department has revised the rules at N.J.A.C. 5:16-1.4 and 3.2(a) to clarify what constitutes a vacancy.

COMMENT: Commenters questioned who has the authority to appoint to a holdover seat. Commenters stated that the conditions when the power to appoint to the seat will revert to the municipality should also be clarified.

RESPONSE: N.J.S.A. 40A:12A-17 authorizes the governing body or chief executive officer of the municipality to fill a vacancy at any time with the exception of the seat reserved for the State appointment. In instances where vacancies, including seats occupied by "holdovers," remain unfilled by the municipality, however, the law authorizes the DCA Commissioner to fill vacant seats after 120 days to ensure the effective management of housing authorities.

The Department has modified the wording of the rule at N.J.A.C. 5:16-3.2(a) to clarify the appointment authority. The modified rule provides that "at the expiration of the term, resignation, death or removal of the DCA Commissioner's appointment, the right of appointment will revert to the appointing agency."

COMMENT: Commenters noted that N.J.A.C. 5:16-2.4 should contain specific language concerning penalties for individuals failing to obtain certification within the prescribed period and thus serving in a "holdover" capacity indefinitely. Commenters proposed that the rules specify that commissioners have two years to obtain their training certifications or they become ineligible for reappointment. In addition, the commenters indicated that executive directors who fail to obtain certification within two years shall be deemed to have resigned.

RESPONSE: N.J.S.A. 40A:12A-46 precludes indefinite holdovers of commissioners. The statute clearly provides that commissioners or executive directors who fail to satisfy the training program requirements within the prescribed timeframe shall be deemed to have resigned at the end of the specified period. The statute also allows commissioners to complete their terms but specifies that they are ineligible for reappointment. While a commissioner may continue as a holdover after his or her term expires, this seat nevertheless is deemed vacant and after 120 days may be filled by the Commissioner of the Department of Community Affairs as provided in N.J.S.A. 40A:12A-17. The Department believes the statute adequately addresses the consequences of noncompliance. Moreover, N.J.A.C. 5:16-3.3(a)3, as amended on adoption addresses appointments made in violation of the statute or the rules. This section provides the Department with enforcement authority and includes language governing appropriate actions. The language added at paragraph (a)3 is in response to a commenter's concern regarding the Department's authority to address appointments made in violation of the law and/or indefinite holdovers of commissioners.

COMMENT: Commenters stated that the statute does not allow the DCA Commissioner to waive the education and experience credentialing requirements for executive directors, only the training requirements. The respondents argued that permitting waivers of the education and experience requirements for executive directors opens the door to future abuse of the appointment process. Commenters requested, therefore, that the Department not waive the credentialing requirements, especially the education standard.

RESPONSE: Pursuant to N.J.S.A. 40A:12A-18, executive directors must satisfy the college education and experience provisions as prerequisites for employment. The Department will not waive these requirements. While section 18 also provides that executive directors holding that position on the effective date of the Law are not subject to the education provision, all executive directors must satisfy the training provisions set forth in N.J.S.A. 40A:12A-45. The Department has revised the rule at N.J.A.C. 5:16-2.5 to eliminate the reference to a waiver of college education and experience prerequisites. Therefore, the Department has included the regulatory language concerning equivalency evaluations, formerly N.J.A.C. 5:16-2.6(a) through (d) to be recodified as N.J.A.C. 5:16-2.5(b) through (d) entitled "Waivers."

COMMENT: Commenters noted that the rules did not reflect the provisions of N.J.S.A. 40A:12A-18.1 which exempts assistant and deputy directors from the college education requirement.

RESPONSE: The Department has revised the rules at N.J.A.C. 5:16-2.7(a)2 to include the exemption affecting assistant and deputy directors.

COMMENT: Commenters expressed concern about the Department's procedures to review the education and experience credentials of executive directors seeking employment. These respondents stated that public awareness of an executive director's name as a candidate prior to an offer of employment jeopardizes his or her current employment status. The commenters suggested two modifications to the candidate review process: (1) the authority may make an offer of employment, but **not** an appointment, subject to the Department's approval; or (2) currently employed or acting executive directors and assistant directors may submit their credentials to the Department and receive written pre-approval.

RESPONSE: The Department believes it is appropriate to review the credentials of a candidate prior to an offer of employment, since an offer, once tendered, may be difficult to retract. The DCA Commissioner is required to determine compliance with the statute and this can only be achieved through a timely review process. Therefore, the Department will continue to require housing authorities to submit the credentials of executive director candidates to the Department for review prior to an offer of employment.

To expedite the approval process, the Department has added on adoption text at N.J.A.C. 5:16-3.1(c) which will allow executive directors who satisfy the indicated requirements to obtain a pre-certification of education and experience. This change incorporates the language recommended by several of the commenters.

COMMENT: Two commenters expressed dissatisfaction with the mandatory training requirement for current commissioners, but did not object to mandated training for new commissioners.

RESPONSE: N.J.S.A. 40A:12A-45 mandates the DCA Commissioner to prescribe a training program for commissioners. The purpose of the curriculum is to assure that all commissioners receive basic, consistent, current information regarding their responsibilities. Continuing education assumes particular value for commissioners who have a unique responsibility, by virtue of the policies they set and the large budgets they oversee, to safeguard the public trust and the interests of a vulnerable population. The Department presumes no authority to contradict the Law and will enforce mandatory training for all commissioners in accordance with the relevant provisions of the Law.

Summary of Agency-Initiated Changes:

Change in text at N.J.A.C. 5:16-1.4 for the definition of "equivalency agency": The Department has experienced problems in locating an agency able to provide the services required for this program. The amended definition provides the Department with the flexibility to establish a group/committee to evaluate educational and training programs, if necessary.

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Added text at N.J.A.C. 5:16-2.1(e)2: The rules currently require directors and commissioners of municipal redevelopment agencies to complete a course curriculum different than the course curriculum for executive directors and commissioners of local housing authorities. There are some course requirements which are identical for both curriculums, however. The Department will not require executive directors and commissioners to take the same course twice when that course is required for two different curricula. The new language eliminates this potential duplication of training requirements.

Added text at N.J.A.C. 5:16-2.3(b): The rules specify two separate course curricula for local housing authority training and municipal redevelopment training. Upon completion, participants receive a certificate of completion for the specific course curriculum. The new language clarifies that the certificate issued to a participant upon completion of the course curriculum reflects completion of only that course curriculum, not both course curricula.

New language at N.J.A.C. 5:16-2.3(c): This new language also reflects the separate course curricula. The language requires officials of an entity which assumes additional powers and duties, such as a housing authority engaging in redevelopment activities, to complete the appropriate training course curriculum.

Added text at N.J.A.C. 5:16-2.4(b): The addition of the phrase "whichever is later" is to ensure consistency with the language used at N.J.S.A. 40A:12A-46 and the first sentence of N.J.A.C. 5:16-2.4(b) which also uses the phrase "whichever is later."

New language added at N.J.A.C. 5:16-2.5(c)4: The language added to paragraph (c)4 concerning satisfactory completion of the course reiterates the language used to define "satisfactory" at N.J.A.C. 5:16-1.3 Definitions. Adding this language will ensure that the Department is consistent in determining what constitutes "satisfactory" completion of evaluations. Additionally, the Training Program, as currently structured, does not use a 4.0 grading system. To pass the course, program participants must answer 70 percent of the evaluation questions correctly.

New language at N.J.A.C. 5:16-3.3(a): The Department added the language "an individual" at subsection (a) to correct an omission. The existing language does not clearly indicate who would be subject to removal.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the adopted new rules do not involve the implementation of, compliance with or participation in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

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

CHAPTER 16
LOCAL HOUSING AUTHORITY AND MUNICIPAL
REDEVELOPMENT AGENCY TRAINING PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

5:16-1.1 Title; scope

(a) The rules contained in this chapter shall be known as the "Rules for the Local Housing Authority and Municipal Redevelopment Agency Training Program."

(b) These rules govern the prescribed training program referred to as Local Housing Authority and Municipal Redevelopment Agency Training Program, hereinafter designated as the LHA/MRA Training Program.

5:16-1.2 Authority

These rules are promulgated by the Commissioner of the Department of Community Affairs pursuant to the authority of the "Redevelopment and Housing Law," (P.L. 1992, c.79; N.J.S.A. 40A:12A-1 et seq.)

5:16-1.3 Intent and purpose

The purpose of the LHA/MRA Training Program shall be to improve the technical expertise and management skills of commissioners and executive directors of local housing authorities and municipal redevelopment agencies through a comprehensive, structured educational program.

5:16-1.4 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All definitions found in the Redevelopment and Housing Law, P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.), shall be applicable to this chapter.

"Certificate of completion" means written documentation provided to executive directors and commissioners of local housing authorities and municipal redevelopment agencies evidencing successful completion of the required course of study for the LHA/MRA Training Program.

"Commissioner" means an appointed member of the governing board of a local housing authority or a municipal redevelopment agency, which board is responsible for overseeing operations, including developing policy and establishing monitoring controls.

"Commissioner of the Department," or "DCA Commissioner," means the Commissioner of Community Affairs.

"Course curriculum" means the mandatory and elective courses that executive directors and commissioners of local housing authorities and municipal redevelopment agencies must complete to satisfy the training requirements more fully described in N.J.A.C. 5:16-3.

"DCA Commissioner" (See "Commissioner of the Department.")

"Department" means the New Jersey Department of Community Affairs.

"Equivalency agency" means an agency***, individual or group*** qualified to evaluate *[training and experience,]* ***professional*** educational programs, and other license, certificate and training programs offered by educational institutions, and military, employer and professional associations to determine whether the training *[or experience]* meets or exceeds the LHA/MRA Training Program requirements.

"Executive director" means an individual employed as the chief officer of a local housing authority or municipal redevelopment agency and responsible for the daily management of the entity.

"Hardship" means any physical, mental or social privation, suffering or adversity that may hinder or preclude an individual from satisfactorily completing the requirements of the LHA/MRA Training Program. The New Jersey Department of Community Affairs will, within reason, provide appropriate accommodations to assist all LHA/MRA Training Program participants to complete both the course curriculum and evaluation components.

"Holdover" means an individual who continues to occupy a seat as a member of a board after resignation or upon expiration of the term associated with that seat, and who has no right to the office.

"Housing Authority and Redevelopment Agency Training Advisory Committee" means the committee, comprised of staff of the Department of Community Affairs, representatives of the New Jersey National Association of Housing and Redevelopment Officials (NJNAHRO), the New Jersey Association of Housing and Redevelopment Authorities (NJAHRA) and the United States Department of Housing and Urban Development, executive directors and commissioners of housing authorities, representatives of Rutgers, The State University, and two nationally recognized training organizations, that has responsibility for guiding the course of study for the Training Program.

"Local housing authority" means a housing authority created or continued pursuant to the "Redevelopment and Housing Law," P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.).

"Member" means an individual serving as a member of a local housing authority or a commissioner of a municipal redevelopment agency.

"Municipal redevelopment agency" means a redevelopment agency created or continued pursuant to the "Redevelopment and Housing Law," P.L. 1992, c.79 (N.J.S.A. 40A:12A-11).

"Pre-session evaluation" means the written or oral performance assessment administered by LHA/MRA Training Program instructors at the beginning of each course to familiarize participants with the course material.

"Post-session evaluation" means the written or oral performance assessment administered by LHA/MRA Training Program instructors at the end of the course to assess the participant's understanding of and to reinforce key concepts and significant issues covered during the training session.

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"Program participant" means an individual attending approved LHA/MRA Training Program courses.

"Recognized educational agency" means an educational, business, military or professional organization which offers credit or non-credit educational courses which, upon prior approval of the Department, may be judged equivalent to the required LHA/MRA Training Program courses.

"Satisfactory" when used in reference to evaluations, means providing correct responses to no less than 70 percent of the questions.

"State-approved course" means a course offered by an organization or entity other than the New Jersey Department of Community Affairs, Rutgers or other training facilitator that satisfies the requirements of the LHA/MRA Training Program and for which executive directors and commissioners shall receive credit.

"Training facilitator" means an entity recognized and approved by the Department of Community Affairs to develop and offer the LHA/MRA Training Program curriculum.

"Vacancy" means an appointed position or board seat that is occupied by a holdover or that remains unfilled at the expiration of a term or upon the resignation, death or removal of an appointee of an unexpired term.

5:16-1.5 Severability

If any provision of these rules or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the rules and to this end, the provisions of the rules are severable.

SUBCHAPTER 2. TRAINING REQUIREMENTS AND ADMINISTRATION

5:16-2.1 Training curriculum

(a) The purpose, objectives and content of each course approved as part of the LHA/MRA Training Program curriculum shall meet the standards established and approved by the Department, as set forth in this chapter, and shall address New Jersey rules, programs and issues. The course of study shall be designed to clarify the functions, duties and limits of housing authorities and redevelopment agencies and the decision-making responsibilities of individuals serving as executive directors or commissioners and to familiarize them with current methods and procedures for managing public housing units, publicly assisted housing, or redevelopment projects.

(b) The course curriculum for commissioners of local housing authorities shall consist of four mandatory and one of five elective courses, ranging in length from one-half day to one day. A half-day program shall be four hours in length, while a full-day program shall be seven hours. Housing authority members must satisfactorily complete all mandatory courses and one elective course within the time prescribed in N.J.A.C. 5:16-2.4(a).

1. The mandatory commissioner courses shall be as follows:

i. Skills for Commissioners: provides a broad overview of the roles and responsibilities of commissioners;

ii. Financial Issues and Procedures: explores a range of financial management skills, including budgets, cost allocations and funding sources;

iii. Public Housing Management Assessment Program (PHMAP): explores how to use PHMAP as a management tool and how to improve an authority's PHMAP scores; and

iv. Ethics: provides an overview of public ethics.

2. Elective courses for commissioners may include, but are not limited to, the following courses. At the discretion of the Department, courses may be added or eliminated, as participant demand and interest dictate.

i. Resident Initiatives;

ii. Current Issues/Programs in Affordable Housing;

iii. Legal Issues;

iv. Public Relations/Communications; and

v. Planning and Development of Affordable Housing.

(c) The course curriculum for executive directors of local housing authorities shall consist of seven mandatory and three of eight elective courses, ranging in length from one-half day to two days. A half-day program shall be four hours in length, while a full-day program shall be seven hours. Executive directors of housing authorities must satisfactorily complete all seven mandatory courses and three elective courses within the time prescribed in N.J.A.C. 5:16-2.4(b). Six of the seven mandatory courses shall be offered through the LHA/MRA Training Program. The seventh course, Public Housing Management Certification, is available from other sources.

1. The mandatory executive director courses shall be as follows:

i. Executive Housing Management: a two-day program which includes an overview of the functions of planning, organizing, directing and controlling, with topics in time management, negotiation, conflict management and team building;

ii. Financial Management: includes budgets and their preparation, records, investment, computer software and financial statement preparation;

iii. Maintenance Management: includes budget preparation, staffing, quality control, resident involvement and insurance and liability;

iv. Procurement and Contract Management: provides a basic understanding of the differences between Federal and State mandated procedures and accepted professional practices used in PHA procurement in New Jersey, with emphasis on contract negotiation, management and administration skills and professional ethics;

v. Personnel Management: provides instruction to develop and evaluate management plans, correct personnel problems, measure performance levels and understand management by objectives;

vi. Ethics: familiarizes executive directors with New Jersey and HUD ethical standards and legal requirements for public officials; and

vii. Public Housing Management Certifications: PHM will not be offered on a regular basis as part of the LHA/MRA Training Program. To take this course, participants must contact a sponsoring organization directly. Credit will be awarded to anyone who has completed a PHM training program offered by a HUD-approved institute. To receive credit, a copy of a Certificate of Completion from the sponsoring organization must be submitted to the New Jersey Department of Community Affairs, Division of Housing, Fifth Floor, CN 806, Trenton, New Jersey 08625-0806 Attention: LHA/MRA Training Unit.

2. Elective courses for executive directors may include, but are not limited to, the following courses. Courses may be added or eliminated, as participant demand and interest dictate, and at the discretion of the Department.

i. Planning and Development of Affordable Housing;

ii. Resident Initiatives;

iii. Legal Issues;

iv. Public Relations/Communications;

v. Public Housing Management Assessment Program;

vi. Occupancy;

vii. Modernization; and

viii. Current Issues/Problems in Affordable Housing.

(d) The course curriculum for commissioners of municipal redevelopment agencies shall consist of three mandatory courses, ranging in length from one-half day to one day. A half-day program shall be four hours in length, while a full-day program shall be seven hours. Commissioners must satisfactorily complete all mandatory courses within the time prescribed in N.J.A.C. 5:16-2.4(a).

1. The mandatory commissioner courses shall be as follows:

i. Principles of Redevelopment: explores strategies for neighborhood revitalization, the planning process as related to New Jersey Municipal Land Use Law, financial and marketing issues;

ii. Skills for Commissioners: provides a broad overview of the roles and responsibilities of commissioners; and

iii. Ethics: provides an overview of public ethics.

(e) The course curriculum for executive directors of municipal redevelopment authorities shall consist of three mandatory and two elective courses, selected from the courses offered executive directors through the LHA/MRA Training Program. Executive directors of redevelopment agencies must satisfactorily complete all three mandatory courses and two elective courses within the time prescribed in N.J.A.C. 5:16-2.4(b).

1. The mandatory executive director courses shall be as follows:

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i. Principles of Redevelopment: explores strategies for neighborhood revitalization, the planning process as related to New Jersey Municipal Land Use Law, financial and marketing issues;

ii. Planning and Development of Affordable Housing; and

iii. Ethics: provides an overview of public employee ethics.

2. Executive directors and commissioners of an agency that serves as both a MRA and LHA shall complete only the Principles of Redevelopment course, in addition to the mandated LHA curriculum.

(f) For any course topic, proposed activities shall accomplish the instructional objectives of the LHA/MRA Training Program and may include lecture, small group discussion, in class exercises, audio visual material and handouts.

(g) To the greatest extent possible, the course curriculum shall be designed to enhance student participation and shall be interactive. The use of New Jersey-specific materials is encouraged. Class sizes shall be limited to no more than 45 students.

5:16-2.2 Evaluation criteria

(a) The Department, or its authorized designee, shall develop evaluation procedures to assess the competency of participants completing the LHA/MRA Training Program. The evaluations shall allow participants to demonstrate competency and proficiency at the conclusion of each course.

(b) Course competency shall be measured through the administration of brief pre- and post-session evaluations for each course. The post-session evaluation shall be rated on a satisfactory/unsatisfactory basis.

1. The pre-session evaluation shall familiarize course participants and course instructors with the course material prior to the actual delivery of the course curriculum.

2. The post-session evaluation shall assess the course participant's understanding of the materials covered during the class. Questions designed by the instructor shall reinforce key concepts, important issues and significant facts. The last half-hour of each course shall be reserved for students to complete written responses to the questions. A determination of satisfactory or unsatisfactory performance in completing the evaluation shall be in accordance with the standards prescribed by the Department.

(c) To receive credit for a course, a commissioner or executive director must attend the full session and achieve a satisfactory score on the evaluation. No credit shall be assigned for a failed or incomplete course.

1. In instances where a participant attends the course but does not complete the evaluation, the participant shall receive an incomplete for the course. In order to receive credit for the course, the participant must contact the training facilitator and make arrangements to complete the evaluation within 45 days of the date of the training course. Failure to contact the training facilitator and satisfactorily complete the required evaluation shall result in the participant receiving no credit for the course.

(d) To obtain credit toward certification for a failed course, the course must be retaken and a satisfactory score achieved on the evaluation.

5:16-2.3 Certificate of completion

(a) The training facilitator shall issue a certificate of completion to each LHA/MRA Training Program participant who satisfactorily completes the training program requirements.

(b) Issuance of a certificate shall certify that the individual has completed the requisite course of study of the LHA/MRA Training Program ***required for the type of agency or authority in which he or she is currently serving*** and is eligible to be employed or appointed in the State in accordance with the provisions of these rules. ***The certificate issued for completion of the Redevelopment Agency training shall not imply completion of the Local Housing Authority curriculum.**

(c) When a person with a certificate assumes a position at an agency or authority with different training requirements, that person shall comply with the requirements mandated for the assumed position. When an agency or authority assumes new responsibilities that alter its power and functions, its director and board shall complete the training curriculum appropriate to the new function.*

5:16-2.4 Compliance period

(a) Except as provided by N.J.S.A. 40A:12A-46(a), any person serving as a commissioner on the board of a local housing authority or municipal redevelopment agency after *[the effective date of the rules]* ***June 5, 1995*** shall satisfactorily complete the prescribed course curriculum within one year following the date of appointment or *[the effective date of the rules]* ***by June 5, 1995***, whichever is later.

(b) Any person serving as the executive director of a local housing authority or municipal redevelopment agency on or after *[the effective date of the rules]* ***June 5, 1995*** shall satisfactorily complete the prescribed course of study within two years after *[the effective date of the rules]* ***June 5, 1995,*** or the effective date of his or her appointment, whichever is later. Executive directors of local housing authorities shall satisfactorily complete at least five of the requisite courses within one year of appointment, or *[the effective date of the rules]* ***June 5, 1995, whichever is later*.**

(c) The Department shall award course credit to those participants who attended the approved LHA/MRA Training Program courses prior to the promulgation of these rules and allow participants to apply these credits toward the training program requirements.

5:16-2.5 Waivers

*[(a) The Commissioner of the Department shall waive the education and experience requirements for the executive director and the training requirements for the executive director or commissioner of a housing authority or redevelopment agency under the following circumstances:

1. The college education and experience requirements set forth in N.J.S.A. 40A:12A-18 shall be waived upon submission of a written determination of equivalency for the college education and the five years of work experience from any Department-approved equivalency agency.

i. The determination of equivalency shall clearly indicate the number of years of equivalent experience to be awarded;

ii. The determination of equivalency shall include a list of courses, by name or course title, considered in assessing educational equivalency.]*

*[2.]***(a)*** The DCA Commissioner shall waive all or part of the Training Program course requirements set forth in N.J.S.A. 40A:12A-46 and 47 upon submission of a written determination of course equivalency from a Department-approved Equivalency Agency.

*[i.]***1.*** The determination of course equivalency shall list the courses submitted for determination and indicate to which course(s) of the LHA/MRA Training Program the course is equivalent.

[5:16-2.6 Evaluation of equivalency]

*[(a)]***(b)*** A commissioner or executive director's *[experience, education and]* coursework shall be *[evaluated]* ***eligible for evaluation*** for equivalency credit by the Department-approved equivalency agency, provided it was acquired within three years of the request and in one of the following ways:

1. By obtaining course credits at other institutions; or

2. By completing approved license, certificate, and training programs offered by employer and professional associations.

*[(b)]***(c)*** The Department-approved equivalency agency will utilize the following criteria for judging equivalency:

1. The course must have been organized and presented under the auspices of a recognized educational or professional institution;

2. The course must have included seven hours of class attendance, not counting examinations. (Independent study, video or home study courses shall not be considered);

3. Registrants in the course must have satisfactorily completed at least one written evaluation; and

4. Satisfactory completion of the course must have been based upon *[receiving a passing grade of 2.0 or above based on a 4.0 scale]* ***providing correct responses to no less than 70 percent of the questions on the evaluation*.**

*[(c)]***(d)*** Individuals requesting an equivalency evaluation from the Department-approved equivalency agency shall be responsible for the following:

1. Assuming all costs associated with the evaluation; and

2. Submitting a course description, official transcript or certificate of completion and other required documentation to the approved equivalency agency for review.

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*[5:16-2.7]****5:16-2.6*** Right of appeal

(a) Any person aggrieved by any notice, action or order under this chapter concerning course and experience equivalency determinations, removal of a commissioner or executive director who is deemed unqualified, denials of waiver requests or imposition of any penalties, may appeal by submitting a written hearing request as set forth herein.

1. The aggrieved party must request a hearing. The request shall be made to the Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, New Jersey 08625. The hearing shall be conducted by the Office of Administrative Law, with the DCA Commissioner issuing the final decision.

2. All hearing requests shall be signed by a proper party and shall include:

i. The date of the action which is the subject of the appeal;

ii. The name, title and status of the person submitting the appeal;

iii. The action claimed to be in error; and

iv. A concise statement of the basis for the appeal.

(b) Hearing requests shall not be valid unless submitted within 15 days after receipt of the ruling, notice, determination of equivalency or other similar document upon which the appeal is based.

*[5:16-2.8]****5:16-2.7*** Exemptions

(a) The executive director of a housing authority ***or redevelopment agency*** holding that position at the effective date of the Redevelopment and Housing Law, P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.), possessing the required work experience and holding certification as a Public Housing Manager (PHM) ***or other equivalent certification*** from the National Association of Housing Officials, or from another HUD-recognized professional association in the housing and redevelopment field, shall not be required to meet the college education *[and work experience]* requirements of the credentialing process set forth at N.J.A.C. 5:16-3.1(a) and shall be deemed qualified for continued employment as executive director of any local public housing authority in the State. An executive director shall meet the LHA/MRA Training Program requirements, set forth in this subchapter, unless he or she obtains a written waiver of all or part of the training requirements from the Department.

1. Executive directors in position on *[the effective date of these rules]* ***June 5, 1995*** shall have *[one year from the effective date of the rules]* ***until June 5, 1996,*** to obtain a recognized PHM certification.

2. *[This education exemption shall apply to executive directors in position prior to the effective date of the rules.]* ***Assistant and deputy directors employed by local housing authorities on the effective date of the act are exempt from the college education prerequisite for serving as the executive director of a housing authority. Such persons shall satisfy all other prerequisites for the executive director position.***

SUBCHAPTER 3. GENERAL PROCEDURES

5:16-3.1 Employment requirements for executive directors

(a) To assure the effective management and operation of housing authorities and redevelopment agencies, N.J.S.A. 40A:12A-18 establishes that an executive director shall have attained the following educational and experience requirements:

1. A degree from an accredited four year college or university in public administration, social science or other appropriate program; and

2. At least five years' experience in public administration, public finance, realty, or similar professional employment.

i. Attainment of a masters' degree in an appropriate program may be substituted for two years of experience.

(b) To ensure that executive directors of local housing authorities and municipal redevelopment agencies satisfy the minimum requirements, the DCA Commissioner shall expeditiously review the credentials and qualifications of candidates for the position of executive director prior to appointment. The DCA Commissioner may, at his or her discretion, seek advisory input from other organizations in conducting the review.

1. The authority or agency shall submit for ***Department*** review the credentials of a candidate prior to an *[offer of employment]* ***appointment***. The candidate's resume, *[along with]* ***with name and location of college or university, date of graduation, area of study, and any other*** appropriate qualifications and certifications ***necessary to support a determination***, should be sent to New Jersey Department of Community Affairs, Division of Housing ***and Community Resources***, Fifth Floor, CN 806, Trenton, New Jersey 08625-0806 Attention: LHA/MRA Training Unit, Qualifications Review.

2. The DCA Commissioner shall notify the local housing authority or municipal redevelopment agency of the approval or denial of a candidate's qualifications within two weeks of receipt of the required candidate information and documentation.

(c) Executive directors of housing authorities or redevelopment agencies employed in that capacity as of June 5, 1995, may at any time, themselves request written certification for the education and experience requirements upon submission of their credentials to the Department. The Department will review the request and accompanying credentials and provide a "Pre-certification of Education and Experience" to an executive director who satisfies the statutory requirements. Said pre-certification shall evidence the satisfaction of the employment criteria set forth in N.J.S.A. 40A:12A-12 and 18.

1. The authority or agency board shall notify the Department of the appointment of a pre-certified executive director to the position within two weeks of the appointment.

*[(c)]****(d)*** Appointments made in disregard of the requirements or the Department's determination that a candidate is not qualified shall constitute a violation of these rules, punishable as indicated at N.J.A.C. 5:16-3.3.

5:16-3.2 Board vacancies

(a) Six of the seven members of each local housing authority are subject to appointment by the mayor and governing body or chief executive officer of a municipality. The DCA Commissioner is empowered to fill board vacancies ***caused by a member's term expiration, resignation, removal or death,*** which remain unfilled ***or occupied by a "holdover"*** for 120 days or more. After a vacancy has occurred for 90 days, the DCA Commissioner shall notify the governing body or chief executive officer of his or her intent to fill the vacancy. If it is not filled within the following 30 day period, the DCA Commissioner may appoint a member for the unexpired term. At the expiration of the term, ***resignation, death or removal of the DCA Commissioner's appointment,*** the right of appointment will revert to the appointing agent.

5:16-3.3 Enforcement

(a) The Department shall take appropriate action to remove ***an individual*** or otherwise gain compliance with the statutes or rules. This appropriate action includes, but is not limited to, issuing administrative orders or notices or instituting or causing to be instituted any necessary legal proceedings. The Department shall take such action if it determines that an executive director or commissioner of a local housing authority or municipal redevelopment agency:

1. Has obtained the LHA/MRA Training Program Certificate of Completion by fraud or misrepresentation;

2. Has fraudulently or deceitfully accepted appointment as an executive director or served as a commissioner;

3. Has been appointed or is in violation of the statute and this chpater;

*[3.]****4.*** Has failed to satisfy the minimally acceptable level of training required by these rules;

*[4.]****5.*** Has made a false or misleading written statement, or has made a material omission in any submission to the Department; or

*[5.]****6.*** Has failed to comply with any order issued by the Department.

(b) The Department, in addition or as an alternative to the actions listed in (a) above, may issue a letter of warning, reprimand, or censure with regard to any conduct that, in the judgment of the Department so warrants.

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SUBCHAPTER 4. ESTABLISHMENT OF TRAINING PROGRAM

5:16-4.1 Scope; intent

(a) This subchapter shall control all matters pertaining to the organization and development of the mandatory training program for executive directors and commissioners of local housing authorities and municipal redevelopment agencies.

(b) This chapter is intended to implement the "Redevelopment and Housing Law," P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.) the purpose of which includes ensuring the diligent oversight and administration of local housing authorities and municipal redevelopment agencies and providing the executive directors and commissioners of these entities with comprehensive training in topics related to the operation and management of public housing, publicly assisted housing, and redevelopment agencies. The establishment of a LHA/MRA Training Program is intended to facilitate the effective training of executive directors and commissioners.

(c) The purpose of this subchapter and of N.J.A.C. 5:16-3 are as follows:

1. To establish a LHA/MRA Training Program;

2. To require all persons assuming the position of executive director or commissioner of a local housing authority or municipal redevelopment agency to receive appropriate training, as provided in this subchapter and in N.J.A.C. 5:16-3; and

3. To establish standards and qualifications for persons serving in the capacity of executive director of a local housing authority or municipal redevelopment agency.

5:16-4.2 Applicability

(a) The provisions of this subchapter and N.J.A.C. 5:16-3 shall apply to all executive directors and commissioners of local housing authorities and municipal redevelopment agencies who are currently serving or who are appointed or employed subsequent to the effective date of these rules.

5:16-4.3 Standards for Training Program

(a) In order to competently perform their individual responsibilities and effectively enforce the "Redevelopment and Housing Law," P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.) at the local level, executive directors and commissioners must be fully knowledgeable about issues affecting the redevelopment process, public and publicly-assisted housing and their residents. Financial management, construction management and code compliance, ethics and legal issues affect the effective and efficient operation of local housing authorities and municipal redevelopment agencies. This subchapter adopts standards governing the creation and implementation of the LHA/MRA Training Program.

(b) The standards for the development and administration of the course curriculum shall be prescribed and enforced by the DCA Commissioner. The course curriculum is designed to enhance the knowledge and technical and administrative expertise of executive directors and commissioners exercising policy oversight and administrative and management responsibility for the operations of local housing authorities and municipal redevelopment agencies.

(c) The course curriculum for executive directors and commissioners shall consist of a planned pattern of comprehensive educational courses and interactive case studies designed to enhance group discussion and student participation and which meet the standards set forth in N.J.A.C. 5:16-3.1 et seq.

(d) LHA/MRA Training Program courses shall be scheduled in both the spring and fall semesters in various locations throughout the State of New Jersey. A full course curriculum will be offered for at least two years after the promulgation of the rules. In subsequent years, the Department will analyze the demand for continued training, estimate potential annual enrollments and structure the availability, location and selection of courses to sufficiently address the demand.

(e) State-approved courses may be offered for accreditation by other organizations only with the express written consent of the Department. The Department shall not provide course credit to any participant who completes courses offered by an institution or organization which has not been so approved by the State at the time the course is offered.

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code Enforcing Agencies

Adopted Amendments: N.J.A.C. 5:23-2.20 and 4.5

Proposed: February 21, 1995 at 27 N.J.R. 619(a).

Adopted: April 12, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: April 19, 1995 as R.1995 d.249, **without change**.

Authority: N.J.S.A. 52:27D-124.

Effective Date: June 5, 1995.

Operative Date: October 1, 1995.

Expiration Date: February 3, 1998.

Summary of Public Comments and Agency Responses:

Comments were received from Robert LaCosta, Construction Official of the Township of Scotch Plains; Eric DeGesero, Assistant Director of the Fuel Merchants Association of New Jersey; and Georgia H. Hartnett, Director of Government, Consumer and External Affairs of Elizabethtown Gas Company.

COMMENT: The Township of Scotch Plains is already using a form similar to the proposed form F-370 in conjunction with the issuance of permits for the replacement of furnaces and boilers. Scotch Plains' form has been well received by contractors and has been used by code officials in other municipalities as well. The new form will accomplish at least as much as the Scotch Plains form, if not more. It will benefit both those who are involved in the permit process and those who are involved with the installation of heating equipment.

RESPONSE: The Department appreciates this expression of support for the proposed amendment and commends the Scotch Plains construction code office for having led the way on this issue.

COMMENT: The Fuel Merchants Association of New Jersey opposes the proposed amendment because it does not believe that the burden of inspection should fall upon the heating contractor. Inspection should only be done by local code officials. The public will not look favorably upon having work inspected by the installer of the system.

RESPONSE: The use of this form and procedure is optional, both for the contractor and for the code official. A contractor who does not want to issue a certification may follow the existing inspection procedure. If the contractor is willing to issue the certification and submit it to the local code enforcement office, the Department has been advised that all gas utilities in New Jersey are willing to accept it.

COMMENT: Elizabethtown Gas Company supports the proposed amendment. However, it believes the language should be clarified to make sure that contractors are aware of their continuing obligation to visually inspect the chimney before making the certification, even if this requires removal and reinstallation of the vent connector. Elizabethtown Gas Company also recommends that a jurat be added to the form to ensure that the signer appreciates the fact that false certification may subject him or her to civil penalties under the State Uniform Construction Code Act.

RESPONSE: In the Department's judgment, the wording in the certification form is already sufficient to make it clear that the contractor has visually inspected the chimney and is certifying that it is clean, appropriately lined and properly sized. It would not be appropriate to include a jurat on the form since it is no different from other forms that contractors submit to code officials. A false or misleading statement on any form submitted to a code official is grounds for imposition of civil penalties. It is the Department's experience that contractors are well aware of this. If a jurat is added only to this form, some contractors may mistakenly infer that false statements on forms without jurats are of lesser significance and do not entail the same consequences.

Executive Order No. 27 Statement

No Executive Order No. 27 analysis is required because these amendments are not being adopted, readopted or amended under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adoption follows:

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5:23-2.20 Tests and special inspections

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

(c) The construction official may accept a chimney certification for replacement of fuel fired equipment (form F-370), signed by the person who installed the replacement fuel fired equipment, in lieu of requiring the removal and reinstallation of the chimney vent connector for purposes of inspection of the chimney or vent.

5:23-4.5 Municipal enforcing agencies; administration and enforcement

(a) (No change.)

(b) Forms:

1. (No change.)

2. The following standardized forms established by the Commissioner are required for use by the municipal enforcing agency:

Form No.	Name
. . .	
F-370	Chimney Certification for Replacement of Fuel Fired Equipment

3.-5. (No change.)

(c)-(j) (No change.)

(a)

DIVISION OF CODES AND STANDARDS

Rooming and Boarding Houses

Adopted New Rules: N.J.A.C. 5:27

Proposed: April 3, 1995 at 27 N.J.R. 1346(a).

Adopted: May 8, 1995 by Harriet Derman, Commissioner, Department of Community Affairs.

Filed: May 12, 1995 as R.1995 d.280, **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. 55:13B-4.

Effective Date: May 12, 1995.

Expiration Date: May 12, 2000.

Summary of Public Comments and Agency Responses:

N.J.A.C. 5:27 expired May 2, 1995. Pursuant to N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendment are adopted herein as new rules.

A comment was received from Jean Paashaus.

COMMENT: Reference to rooming houses should not be added to N.J.A.C. 5:27-3.5(b), which deals with appropriate placement. Rooming house residents are typically people whose incomes are low but who are not in need of personal services. There is no reason to require referral to county welfare boards with regard to these residents.

RESPONSE: Section 35 of the Rooming and Boarding House Act of 1979 specifically includes rooming houses among the facilities that county welfare boards are required to visit in order to determine whether residents who are in need of services are appropriately placed. Moreover, the statutory definition of "rooming house" makes it a sub-category of "boarding house" and the practice of the Department has always been to apply the appropriate placement requirements in all facilities. Though rooming house residents may indeed be less likely to require new placement because a facility does not provide services that they require, such cases do occur and it would violate the clear intent of the statute for the Department to be constrained by an interpretation of its own rules from requiring appropriate placement because the facility does not offer personal or financial services and is therefore classified as a rooming house.

Summary of Agency-Initiated Changes:

In response to a memorandum from the fire subcode committee of the Code Advisory Board, the Department is deleting the reference to "maintenance" in N.J.A.C. 5:27-1.5(e), which deals with the designation of the construction official as an agent of the Bureau of Rooming and Boarding House Standards for purposes of inspecting newly constructed, converted or altered rooming or boarding houses. The only maintenance inspection that a construction official would properly do would involve enforcement under N.J.A.C. 5:23-2.32, which concerns unsafe structures, or inspection of elevators. Such enforcement is already covered by N.J.A.C. 5:27-1.5(f). Construction officials are not expected to enforce maintenance requirements that are not covered by the State Uniform Construction Code (N.J.A.C. 5:23 and the adopted subcodes referenced therein).

Executive Order No. 27(1994) Statement

An Executive Order No. 27(1994) analysis is not required because these rules are not being readopted under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Full text of the adopted new rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:27.

Full text of the adopted amendments follows (deletion from proposal indicated in brackets with asterisks *[thus]*):

5:27-1.5 Construction and alteration; change of use

(a) Except as otherwise provided in these rules with regard to required alterations, no rooming or boarding house may be constructed or altered except in accordance with the Uniform Construction Code. Requirements of any adopted subcode of the Uniform Construction Code that exceed requirements of this chapter shall be inapplicable to required alterations unless the Bureau shall otherwise direct.

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

(e) The construction official having jurisdiction in each municipality is hereby designated as an agent of the Bureau for the purpose of inspecting newly constructed, converted or altered rooming and boarding houses in order to enforce the provisions of this chapter dealing with the construction *[and maintenance]* of the building. Copies of all permits and certificates of occupancy issued by the construction official for rooming and boarding houses shall be provided by him or her to the Bureau.

(f) (No change.)

5:27-1.6 Licenses

(a) No person shall own or operate a rooming or boarding house without a license from the Bureau allowing such person to own or operate a rooming or boarding house providing the services therein provided and housing the number of residents therein housed.

(b) (No change.)

(c) The annual fees for licenses shall be as follows:

1.-5. (No change.)

6. Except as otherwise provided in (c) 7 below, the fee for any license, other than a license issued to a corporation, partnership or association, shall include the following additional fee if the facility (or facilities) is (or are) occupied by, or intended to be occupied by, six or more residents:

i.-iii. (No change.)

7. (No change.)

(d)-(m) (No change.)

5:27-2.1 Definitions

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

. . .

"Bureau" means the Bureau of Rooming and Boarding House Standards in the Division of Codes and Standards of the Department of Community Affairs.

. . .

"Director" means the Director of the Division of Codes and Standards of the Department of Community Affairs.

. . .

"Resident" means a person residing in a rooming or boarding house, exclusive of the owner and his or her family and bona fide employees and the operator and his or her family.

. . .

5:27-3.1 Enumeration of rights

(a) Every resident shall have the following rights:

1. To manage his or her own financial affairs;

2. To wear his or her own clothing;

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3. To determine his or her own dress, hairstyle, or other personal effects according to individual preference;

4. To retain and use his or her personal property in his or her immediate living quarters, so as to maintain individuality and personal dignity, except where the licensee can demonstrate that such would be unsafe, that it would be impractical or would infringe upon the rights of others and that mere convenience is not the licensee's motive in restricting this right;

5. (No change.)

6. To have unaccompanied access to a telephone at a reasonable hour (but not the right to make toll calls at any other person's expense) and to have a private telephone at his or her own expense;

7. (No change.)

8. To retain the services of his or her own personal physician at his or her own expense or under a health care plan and to confidentiality and privacy concerning his or her medical condition and treatment;

9. To unrestricted communication, including personal visitation, with any person of his or her choice, at any reasonable hour;

10. To make contacts with the community and to achieve the highest level of independence, autonomy and interaction with the community of which he or she is capable;

11. To present grievances on behalf of himself or herself or others to the licensee, governmental agencies or other persons without reprisal or threat of reprisal in any form or manner whatsoever;

12.-13. (No change.)

14. To practice the religion of his or her choice, including the right to have adequate substitutes provided for foods or combinations of foods which the resident's religious beliefs forbid him or her to eat, or to abstain from religious practice;

15. (No change.)

5:27-3.5 Appropriate placement

(a) (No change.)

(b) In the event that a resident ceases to be capable of self-evacuation, acquires a communicable disease or requires nursing care, supervision of self-administration of medication or services not available in the rooming or boarding house, it shall be the responsibility of the licensee to so notify the county welfare board forthwith so that the resident may be transferred to a facility suitable to his or her needs.

5:27-3.10 Disclosure of rates and services

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

(d) No resident shall be charged for any services other than those which he or she has requested and which are actually provided to him or her.

5:27-6.1 Control of access

(a) (No change.)

(b) Every resident of every rooming house and of every boarding house operated under a Class B license shall be provided with a key to the main entrance door and, if applicable, to his or her rooming unit door, free of charge. Replacement keys, when required, shall be provided at cost.

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

(h) Every entrance door leading to living areas shall be kept locked at all times except when in actual use, except when a licensee or an employee of the licensee is stationed nearby for the purpose of controlling or supervising entry or other reasonable provision has been made for entry control.

(i) (No change.)

5:27-7.2 Bedrooms

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

(d) Each resident shall be provided with sufficient dresser and closet space within the rooming unit for the storage of his or her clothing and other personal articles.

5:27-8.1 Resident records

(a) (No change.)

(b) Each resident's file shall contain at least the following documents:

1.-2. (No change.)

3. Acknowledgement by the resident that he or she has received a copy of the rules and regulations of the rooming or boarding house and agrees to abide by them;

4.-5. (No change.)

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

5:27-8.3 Additional requirements

(a) The Bureau, upon determining that records maintained by a licensee are disorderly or inadequate in any way, or that violations of the act or of these regulations exist which have not been terminated within the period of time allowed by the Bureau for such termination, may order the licensee to maintain such additional records, or maintain the records in such manner, as the Bureau may prescribe.

(b) (No change.)

5:27-9.2 Diet and menu

(a) Every resident shall be provided with a nutritionally adequate diet that is of good quality food, correctly prepared, attractively and properly served in sufficient quantity and in a form and texture that will meet his or her nutritional needs, take into account his or her food preferences and be appetizing.

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

5:27-9.3 Food service

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

(e) A reasonable amount of time shall be allowed for each resident to eat his or her meal.

5:27-10.2 Assistance in dressing

(a) Assistance in dressing shall be provided only by a person whom the resident consents to have assist him or her.

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

(d) Assistance in dressing and undressing shall be provided at reasonable times so that a resident is not unduly delayed in commending his or her daily activities or in going to bed. Sufficient time shall be allowed in light of the resident's physical condition.

5:27-10.3 Assistance in bathing and personal hygiene

(a) Assistance in bathing and personal hygiene shall be provided only by a person whom the resident consents to have assist him or her.

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

5:27-11.6 Personal needs allowance

No licensee shall retain for the licensee's own use, or require payment to the licensee of, any portion of the personal needs allowance required to be reserved to any resident pursuant to N.J.S.A. 44:7-87(h). Such personal needs allowance shall not be less than $40.00 unless otherwise provided by the Department of Human Services.

5:27-12.3 Casino Revenue Fund rental assistance eligibility

(a) The following standards are established for the purpose of determining eligibility of residents for rental assistance made with funds appropriated from the Casino Revenue Fund:

1. (No change.)

2. A person having his or her principal residence within the State of New Jersey who is totally and permanently unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment shall be deemed to be a "disabled resident of the State."

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(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Low Income Housing Tax Credit Qualified Allocation Plan

Adopted New Rules: N.J.A.C. 5:80-33

Proposed: March 20, 1995 at 27 N.J.R. 986(a).

Adopted: May 12, 1995 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Ira Oskowsky, Executive Director/Secretary.

Filed: May 12, 1995 as R.1995 d.281, **without change**.

Authority: N.J.S.A. 55:14K-5g.

Effective Date: June 5, 1995.

Expiration Date: April 17, 2000.

Summary of Public Comments and Agency Responses:

Wood-Ridge Senior Housing, L.P.

COMMENT: The commenter suggested that it would be more appropriate to mandate site plan approval for the 1996 cycle, and for 1995, use it as a guideline, offset by the particular application's ability to deliver their zoning approvals in time to meet the readiness requirement.

RESPONSE: First, it should be noted that the Agency is accepting either "preliminary or final site plan resolution" to meet this eligibility requirement. In addition, the Agency believes that preliminary or final site plan resolution should be required, as the Agency is only awarding credits to projects which are ready to proceed.

COMMENT: With regard to grants (under Financing Commitments), the commenter recommended that if the participating jurisdiction indicates that it will fund in accordance with its fiscal year, and in conjunction with the 1995 year tax credit allocation, the Agency should accept the word of another agency.

RESPONSE: The "intention to fund" of another agency is not legally binding, and is akin to a "Letter of Intent" from a bank or other lending institution. It is not a commitment for funding. Again, as stated in the first response, the Agency is only awarding credits to projects which are ready to proceed.

Plainsboro Nonprofit Housing Corporation

COMMENT: The commenter recommended that in lieu of the inclusion of the MBE/WBE clause in the point system, the Plan could require all applicants to submit an Affirmative Development Plan with its Affirmative Marketing Plan. All developers could be asked to make their best reasonable effort to include subcontractors which are owned by or employ significant numbers of minorities and/or women and in the event a developer determines that this is not possible, he or she could be required to submit a reasonable explanation. In no event, however, should this requirement jeopardize the entire tax credit allocation.

RESPONSE: The Agency does not agree with the commenter that a "best efforts" standard for the inclusion of MBE/WBE is sufficient. What constitutes "best reasonable efforts" to some project sponsors would not be the same for others. Under the Qualified Allocation Plan's point system, the MBE/WBE participation is not a requirement but an option. It is, therefore, up to the project sponsor to decide whether or not it is realistic to utilize MBE/WBEs to score additional points. Should the developer foresee the possibility of not being able to follow through on their commitment, then the project sponsor should not certify to the use of MBEs/WBEs.

Affordable Housing Network

COMMENT: The commenter recommended a one-time up front monitoring fee of $500.00 and that a significantly lower fee should be set for 100 percent low-income projects that have received waivers.

RESPONSE: The Agency has already reduced the one-time up front monitoring fee of $1,000 that was originally implemented by the Agency to $750.00. The $750.00 reduced fee was based on an estimate of the true cost and present value of the $100.00 annual fee per year over the 15-year compliance period.

With regard to a significantly lower fee being set for 100 percent low-income projects that have received waivers, the Agency intends to review this issue at the time the Agency makes a determination as to whether to implement the 100 percent low-income waiver procedure.

COMMENT: The commenter recommended that the plan should provide for an initial review of an application for completeness to determine any deficiencies that can be corrected.

RESPONSE: The Agency will attempt to make every effort to clarify any element in an application which is unclear or apparently misleading by contacting the project sponsor; however, to allow for a cure period, may encourage applicants to submit incomplete or ineligible applications knowing full well that they have an automatic grace period. In addition, the commenter should note that technical assistance is available beginning one month prior to each application deadline. The focus of the technical assistance is, in fact, to help ensure that the application contains all applicable eligibility requirements and that documents are not inadvertently left unsigned, etc.

COMMENT: The commenter recommended that final environmental approvals should not be required for projects being developed throughout the State (not just in conjunction with NJHMFA's Camden Housing Initiative), and that the requirement that sponsors of substantial rehabilitation projects submit verification that the project is not subject to site plan approval should be eliminated.

RESPONSE: The Agency believes that environmental approvals should be required. As the commenter may know, each year the demand for tax credits expands, making the program increasingly more competitive and necessitating the Agency to award credits to projects which are ready to go. As for projects that are part of the Camden-HMFA Housing Initiative, it should be noted that these projects were subject to a new site control/land transfer process, specific to this Housing Initiative, that involved several new legal issues. Because of this, it was difficult for these projects to gain site control, and, therefore, were delayed in starting the process of obtaining both environmental and planning board approvals. As such, the Agency felt it was only fair to give these projects the same chance to compete as other applicants.

With regard to the requirement for substantial rehabilitation, the Agency believes that it is the applicant's responsibility to demonstrate compliance by a letter from the planning board (or appropriate municipal official) stating that the project is not subject to site plan approval. This is necessary mainly because some municipalities do require site plan approval even for projects which involve substantial rehabilitation.

COMMENT: The commenter recommended that the plan should be changed to enable nonprofit sponsors who have construction crews that hire local minority and women construction workers to also qualify for the additional application points.

RESPONSE: The Agency believes that, while this idea is certainly worthwhile, this priority is already being addressed by other mechanisms (such as localities who already require this). The commenter should also be aware that this concept would be tremendously difficult to monitor and track since it would involve monitoring actual payrolls and therefore be very costly. As such, the Agency believes that it is outside the scope of the Low-Income Housing Tax Credit Program.

Robert Schwartz of Lindabury, McCormick & Estabrook

COMMENT: The commenter recommended that an annual credit limitation be placed upon a developer and its affiliates to avoid the unintended consequence of fostering oligarchical control of tax credits in New Jersey. The commenter suggested that a relatively small group of well-positioned players can afford to submit numerous project proposals designed to pass muster under the point and tie breaker systems allowing for rejection of a majority of their applications.

RESPONSE: The commenter's contentions are not supported by the Agency's past experience. Tax credits have been widely distributed and have not been allocated to a few developers. Tax credits are awarded based on a project's merits. The Agency finds no justifiable reason to penalize any developer who can consistently produce good quality housing.

COMMENT: The commenter believes the allocation of tax credits ought to foster smaller scale projects and recommends a reduction in the annual ceiling to $500,000.

RESPONSE: The Agency fosters smaller scale developments by allowing a higher developer fee percentage to projects of 25 units or less. The Agency also finds that limiting allocations to $500,000 or less would preclude a great many good quality Tax credit projects.

COMMENT: The commenter objected to the preference for Minority and Women Business Enterprises in the point system.

RESPONSE: The commenter should note that, under the Qualified Allocation Plan's point system, MBE/WBE participation is NOT a requirement, but an option. Support for inclusion of MBE/WBE participation in the point system is found in the legislative history of the low income tax credit: a 1989 House Report states that the Allocation Plan must take into

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account sponsor characteristics which may include "minority participation in development." In addition, Section 42(m)1(B)(i) of the IRS Code allows housing credit agencies the flexibility to determine "housing priorities appropriate to local conditions." In 1993, the Governor's Study Commission concluded that there was sufficient evidence of race and gender discrimination in procurement and construction contracting in New Jersey to satisfy the requirements under *City of Richmond v. J.A. Corson Company,* 488 *U.S.* 706 (1989) and to support a State set-aside or preference in procurement and construction contracting for qualified MBE/WBE's. The Agency, therefore, believes that awarding points for the participation of MBE/WBE's in the development of Tax Credit Projects is fully justified.

COMMENT: The commenter believes that the proposed rules should make clear whether the NJHMFA is exercising its authority pursuant to IRC 42(h)(5)(E)(i) to bar the operation of Subclause (II) thereof, which otherwise permits a conversion to market-rate units after approximately 18 years.

RESPONSE: The commenter should note that the rules already state that project sponsors are not required—but have the option to increase their low-income commitment to a term of 35 or more years in order to earn extra points.

COMMENT: With regard to the Housing Narrative, the commenter requested clarification on how one would meet the required showings of proof and why they are necessary.

RESPONSE: The Housing Narrative asks for an "explanation" of how the services will be paid for, as well as, the need and demand for the project and its impact upon the neighborhood. The Housing Narrative, therefore, is not asking for anything more than what is normally required in a market study. The commenter should also note that the Housing Narrative is the opportunity for the project sponsor to explain and "market" their project in their own words.

COMMENT: The commenter recommended that applicants certify that the project is in compliance with all applicable land use and zoning ordinances, or a variance thereto has been obtained, and that no other permits or permission from municipal and other governmental authorities are needed to complete the project and no land use or zoning challenges are pending or threatened by any person against the project.

RESPONSE: The commenter should note that the Agency is accepting "preliminary or final site plan resolution" to meet part of this eligibility requirement and, therefore, an applicant may still need certain municipal approvals. The Agency believes that the language currently contained in N.J.A.C. 5:80-33.6(b)5 ("it is the applicant's responsibility to demonstrate that the project complies with all applicable local land use and zoning ordinances . . .,") is sufficient.

COMMENT: In the case of Balanced Housing or State HOME funds being sought from DCA, the commenter requested clarification on what criteria the DCA will use in determining whether projects are sufficiently competitive to receive Tax Credits.

RESPONSE: The Agency feels that the question with regard to DCA's criteria is a question that must be answered by DCA and cannot be answered through the Agency's rules. Once DCA has issued its commitments (which will be announced at the same time as the Tax Credit Awards), the Agency will be utilizing DCA's Balanced Housing and HOME commitments list.

COMMENT: With regard to nonprofits that do not yet have tax-exempt status, the commenter questioned whether NJHMFA will accept an attorney opinion that the nonprofit is organized and thus far has operated in compliance with the conditions for tax-exempt status.

RESPONSE: The Agency has determined that a nonprofit must have an advanced ruling letter or a 501(c)(3) or 501(c)(4) letter to apply for Tax Credits, as a basis for demonstrating that the project is ready to proceed. A letter from the nonprofit's attorney is not binding on the IRS and does not ensure that IRS will grant the nonprofit status.

COMMENT: With regard to step-in-shoes costs exceeding the acquisition, the commenter recommended that the costs should be included in the developer fee base to the extent they are included in eligible basis.

RESPONSE: The commenter is correct with regard to step-in-shoes costs being allowed in eligible basis regardless of acquisition price. However, Housing Credit Agencies are free to determine maximum development fees. NJHMFA has determined that step-in-shoes costs over the acquisition price will be allowed in eligible basis; however, such "step-in-shoes costs exceeding the acquisition price" shall not be used to increase the developer fee base.

Executive Order No. 27 Statement

An Executive Order No. 27 is not required because the rules are either the same as those imposed by Federal law or not subject to any Federal standards or requirements.

Full text of the adoption follows:

SUBCHAPTER 33. LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

5:80-33.1 Introduction

(a) The Low Income Tax Credit ("LITC") Program is one of a variety of resources used to stimulate the development of affordable housing. Like most State and Federal resources, the LITC program is a limited resource with a finite dollar amount allocated to it each year. With the State's affordable housing needs continually growing, the question is often asked of how to best allocate these resources to get the greatest results. The State of New Jersey is making a concerted effort to target resources to key areas in the State, in order to increase the positive impact to those areas.

(b) In keeping with this philosophy, the New Jersey Housing and Mortgage Finance Agency (NJHMFA) in its Tax Credit Allocation Plan has prioritized tax credit allocations to projects that are located in targeted areas. The NJHMFA may consider expanding the targeting strategy to include:

1. Designated Empowerment Zones and Enterprise Communities;

2. Municipalities in which the Office of State Planning has approved a Strategic Revitalization Plan;

3. Neighborhood designated by the Commissioner of the Department of Community Affairs as part of a neighborhood-based strategy.

(c) At the conclusion of the allocation year, NJHMFA will evaluate the viability of any expansion under (b) above and make a determination as to whether they will be included in promulgated amendments to this Plan.

(d) In order to provide for the effective coordination of the New Jersey Low Income Tax Credit Program and the Internal Revenue Code (the "Code"), the rules within this subchapter shall be construed and administered in a manner consistent with the Code and regulations promulgated thereunder.

(e) Compliance with the requirements of the Code is the sole responsibility of the owner of the building for which the credit is allowable. NJHMFA makes no representations to the owner or anyone else as to compliance with the Code, Treasury regulations, or any other laws or regulations governing Low-Income Housing Tax Credits, or as to the financial viability of any project. All applicants should consult their tax accountant, attorney or advisor as to the specific requirements of Section 42 of the Code governing the Federal Low Income Housing Tax Credit Program.

5:80-33.2 Definitions

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

"Adaptive reuse" means the substantial rehabilitation and conversion of any existing non-residential building, (for example, school or factory) to a residential use.

"COAH obligation" means a low/moderate income rental project that is in a Council on Affordable Housing (COAH) certified plan or in a plan that is currrently under COAH's jurisdiction as the result of a petition for substantive certification.

"Court-ordered obligation" means a low/moderate income rental project that is part of a judgment of repose, a pending judgment of repose and/or court settlement that is the result of an exclusionary zoning lawsuit.

"Complete application" means an application including the application fee, completed application forms and certifications, and all eligibility requirements.

"De minimis award" means an award of credits from the Reserve in order to fully fund the last of the highest ranking projects in a cycle up to a maximum of $100,000. An example of a de minimis award follows:

There are 10 projects in the suburban cycle. They are ranked highest to lowest. There are enough credits to fully fund the first five projects. The sixth project needs $100,000 but there is only $10,000 left in the cycle. NJHMFA may take $90,000 from the Reserve and award it to the project. If the last highest ranking projects is not able to be fully funded by using

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the amount left in the cycle plus a de minimis award, the project may not be able to be funded and may have to reapply.

"Family project" means any non-age-restricted project.

"Geographic distribution" means in order to promote equitable distribution of tax credits across the State, NJHMFA takes into consideration geographic distribution when awarding reservations of tax credits. In a tie-breaker situation, credits will be awarded to the project situated in the area that has not yet received low income housing tax credits.

"Minimum rehab project" means any project undertaking rehabilitation, where the construction costs total less than 50 percent of the acquisition cost where construction cost equals the costs of demolition, off-site improvements, residential and other structures, environmental clearances, surety, sales tax, building permits and other costs of construction and acquisition cost equals the costs of land, building acquisition appraisal, relocation and other acquisition costs. Minimum rehab projects ar eligible to apply only in the Final Cycle. They will be funded in the third round only if there are no other projects left to fund.

"Qualified nonprofit organization" means, pursuant to Section 42(h)(5)(B) of the Code, an entity that owns an interest in the project (directly or through a partnership) and materially participates (within the meaning of Section 469(h)) in the development and operation of the project throughout the compliance period and is not affiliated with or controlled by a for-profit organization. Section 42(h)(5)(C) defines a qualified nonprofit organization as follows:

1. Such organization is described in paragaraph (3) of (4) of Section 501(c) and is exempt from tax under Section 501(a);

2. Such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and

3. One of the exempt purposes of such organization includes the fostering of low-income housing.

Section 42(h)(5)(D) describes how certain subsidiaries meet the definition of a qualified nonprofit organization as follows:

1. In general: For purposes of this paragraph, a qualified non profit organization shall be treated as satisfying the ownership and material participation test of Section 42(h)(5)(B) if any qualified corporation in which such organziation holds stock satisfies such test.

2. Qualified corporation: For purposes of paragraph 1 immediately above, the term `qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by one or more qualified nonprofit organizations at all times during the period such corporation is in existence.

"Senior project" means a project dedicated to households whose head, spouse or sole member is 62 years of age or older.

"Social services model" means any project which submits evidence such as an executed agreement between a housing and social service provider or otherwise demonstrates to the satisfaction of NJHMFA that one or more of the following types of services will be provided to improve the quality of life of the residents of the project. The services include, but are not limited to:

1. Hiring a full-time social service coordinator. If a social service coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week;

2. Providing child care services either on site or linked to outside child care centers;

3. Providing health care services either on site or linked with a local health care provider;

4. Providing job training programs on site or linked with a local training center;

5. Providing personal care and/or housekeeping services on site;

6. Providing at least one congregate meal on site;

7. Providing adult day-care services; or

8. Providing transportation services for the residents.

A project cannot be classified as having both a special needs component and a social services model. In a tie-breaker situation where a special needs project is tied with a project offering a social services model, the tie cannot be broken on the social services model tie-breaker. Instead, both projects go to the next rung of the tie-breaker system which is geographic distribution.

"Special needs project" means a project serving populations including individuals and families who are in need of certain types of home and/or community-based supportive services, usually on an ongoing basis, in order to remain capable of independent living in communities. Supportive services range across a wide continuum of care and will vary from person to person depending on their particular physical, psycho-social, and/or mental limitations, and may vary for one person over time. Each special needs tenant does not have to utilize all of the services provided by the project; however, the services must be available. If tenants are not utilizing the services that are available, NJHMFA may call into question whether or not the project is serving a special needs population. In order to be classified as a Special Needs Project, applicants must propose a project which will reserve a minimum of 20 percent of the total affordable units in the project for occupancy by one (or more) of the targeted populations referred to below, and must make available a minimum of three daily services addressing the needs of the identified group, one of which must be a social services coordinator. If a social services coordinator is being provided through a third party, then a signed agreement between the two parties is required, and the coordinator must be dedicated to the tax credit project for at least 20 hours a week. Project sponsors may reserve more than 20 percent of their affordable units for occupancy by one or more of these targeted populations. For certain types of special needs projects, no more than 30 percent of the units should be set aside for persons with special needs in order to avoid saturation or an institution-type atmosphere. In order to be classified as a Special Needs Project, applicants must also demonstrate evidence of appropriate linkages—such as an executed agreement between a housing and social service provider and commitments from applicable State and/or local agencies. In addition, applicants must demonstrate that the market for the targeted population exists in the project's service area and market the units to persons with special needs. In a tie-breaker situation where a special needs project is tied with a project offering a social services model, the tie cannot be broken on the social services model tie-breaker. Instead, both projects go to the the next rung of the tie-breaker system which is geographic distribution. Examples of target populations are:

1. Persons with AIDS/HIV-related illness;
2. Homeless;
3. Mentally ill;
4. Frail elderly;
5. Alcohol/substance abusers;
6. Persons with physical disabilities;
7. Mentally retarded/developmentally disabled;
8. Pregnant/parenting teens; or
9. Victims of domestic violence.

Examples of supportive services include, but are not limited to, the following:

1. Case management;
2. Counseling and crisis intervention;
3. Health care advocacy and linkages;
4. Assistance with activities of daily living and/or instrumental activities of daily living;
5. Recreational activities;
6. Entitlement counseling and advocacy;
7. Employment counseling and training;
8. Support groups;
9. Home-based personal or medical assistance;
10. Skilled nursing;
11. Meals preparation;
12. Housekeeping;
13. Substance abuse and mental health supports; or
14. Child care.

Linkages, Service Commitments and Market Analysis—Applicants who propose a special needs project must also demonstrate evidence of appropriate linkages—such as an executed agreement between a housing and social service provider and commitments from applicable state and/or local agencies. In addition, applicants must demonstrate that the market

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for the targeted population exists in the project's service area and affirmatively market the units to persons with special needs.

"Targeted city" means any city designated by the Governor's Urban Coordinating Council.

"Targeted neighborhood" means any neighborhood which has been selected for implementation of a specific revitalization plan within a city designated by the Governor's Urban Coordinating Council. If the targeted neighborhoods are not announced at least one month prior to the application deadline, only targeted cities shall apply and the full 20 points awarded.

5:80-33.3 Reservation cycles

(a) Each year there will be up to three cycles and a reserve set-aside. They will be advertised in The Atlantic City Press, The Record, Newark Star Ledger, The Courier News, The Asbury Park Press, The Camden Courier Post, Bridgeton Evening News and The Times. NJHMFA will set the eligibility cut-off dates in each year for receipt of completed applications. The application filing deadlines and the credits available in each cycle will be announced as early in the year as possible. Reservations will be announced approximately 90 days (or the next business day if the 90th day is a weekend or holiday) after the deadline for the cycle. NJHMFA may adjust the number of cycles or adjust the dates if required by the time of passage of Federal legislation or adoption of IRS rules and regulations or for other compelling circumstances.

(b) For the Urban Cycle, only projects located in municipalities listed on the urban area list (see Appendix Exhibit 1 incorporated here by reference) may apply in this cycle. Fifty-four percent of the State's population credits are available in this cycle. Minimum rehab projects are not eligible to apply in this cycle.

(c) For the Suburban Cycle, all projects not located in municipalities listed on the urban area list may apply in this cycle. Thirty-six percent of the State's population credits are available in this cycle. Minimum rehab projects are not eligible to apply in this cycle.

(d) The Final Cycle will take place only in the event there are unused credits from the Reserve or the Urban and Suburban Cycles or if New Jersey is awarded an allocation from the National Pool. All projects may apply to this cycle. If all credits are not reserved in the Suburban and Urban Cycles, the remaining amount will be made available in this cycle. Any National Pool as well as any remaining credits in the Reserve set-aside will also be made available in this cycle. Minimum rehab projects are eligible to apply in this cycle.

(e) Should NJHMFA receive any returned credits after the Final Cycle awards have been made, NJHMFA will, to the extent possible, try to reallocate them before December 31st. They will be allocated to the next-highest ranking project(s) from the Final Cycle.

(f) Projects that were admitted to a cycle but did not receive a reservation of credits may re-apply in the Final Cycle by simply submitting a Reapplication Certification in which the applicant certifies that there are no changes whatsoever to the previously submitted application or documents any and all changes to the previously submitted application. If there are changes, a reapplication fee is required.

5:80-33.4 Application fees

(a) An application fee of $1,000 is required with each application. The application fee is nonrefundable and will be credited toward the reservation fee. A nonrefundable reapplication fee of $100.00 is required only if there are changes to the application.

(b) Projects that applied but did not receive a reservation of credits can reapply in a later cycle or the following year by submitting a reapplication certification and reapplication fee. Projects that are in essence new projects, for example, changes in the project composition, sites or sponsor or developer entities, must submit a new application and application fee.

5:80-33.5 Set-asides

(a) The NJHMFA shall establish a Reserve Set-Aside by setting aside 10 percent of the State's population credits, any returned credits and any carryforward credits, as a reserve for projects that did not receive a full allocation in the previous year because there were not enough credits to meet the demand and for projects that did receive a full allocation but need additional credits due to technical errors, de minimis awards and for projects that need additional credits due to construction costs overruns, etc. The Reserve Set-Aside is not included within the Urban or Suburban Cycle. The dual purpose of the Reserve Set-Aside is intended to address the following.

1. NJHMFA has been experiencing unprecedented demand for the low-income housing tax credit and as a result was able to only partially fund some projects in the prior allocation year. Those projects that did not receive their full eligible allocation based on NJHMFA's credit evaluation are eligible to compete for up to their full allocation in this portion of the Reserve. The developer fee and eligible basis will be frozen at the level of the last carryover certification. Projects such as these must follow the application requirements listed under N.J.A.C. 5:80-33.9. The deadline date for receipt of these applications is the same as the Urban and Suburban Cycles' deadline. These projects will be ranked in accordance with the criteria set forth in the Final Cycle. Awards will be announced at the same time as awards from the Urban and Suburban Cycles and any credits left will be made available under paragraph 2 below. The amount of credits available in this portion of the Reserve is nine percent of the State's population credits.

2. This portion of the Reserve Set-Aside is for hardship requests for projects that have received a full allocation but need additional credits due to technical errors, de minimis awards and for projects that need additional credits due to construction cost overruns, etc. Applicants cannot apply for additional credits from this portion of the reserve until the year in which the project places in service. Any hardship request must be documented to the satisfaction of NJHMFA. There is no application deadline for this portion of the Reserve; however, credits from the Reserve are subject to availability. This portion of the Reserve is funded by carryforward and returned credits and the remaining one percent of the State's population credits. $100,000 of this portion of the Reserve will be set aside for technical errors, etc. until allocations are ready to be made in the Final Cycle.

(b) The NJHMFA shall establish a Senior Set-Aside by setting aside 20 percent of the credits available in the Urban and Suburban Cycles for senior citizen projects. Senior citizen projects are eligible for credits beyond the set-aside. In each cycle, reservations will first be awarded to the highest scoring senior projects until the senior set-aside has been met. Once the senior set-aside has been fully reserved to senior projects, reservations will be awarded to the highest scoring nonprofit-sponsored projects until the nonprofit set-aside has been fully reserved. Then, reservations will be awarded to the applications with the highest scores. If, because of lack of demand, the senior set-aside is not fully utilized, remaining credits in the senior set-aside will be released into that cycle for use by other projects.

(c) The NJHMFA shall establish a Nonprofit Set-Aside in order to encourage the participation of local and/or State tax-exempt organizations in the tax credit program. Twenty percent of the credits available in the Urban and Suburban Cycles will be set aside for qualified nonprofit organizations. Nonprofits are eligible for credits beyond the set-aside. If, however, there is not enough nonprofit demand, credits remaining in the nonprofit set-aside shall be made available to other projects so long as no more than 90 percent of the total State housing credit ceiling, as per Internal Revenue Code 42(h)(5)(A), is allocated to for-profit sponsored projects. In order to qualify for credits from the nonprofit set-aside and for the nonprofit reservation fee, organizations must certify that they are a qualified nonprofit organization under the meaning of the Code.

(d) Nonprofit senior projects will count toward both set-asides. For example, if a senior project sponsored by a qualified nonprofit organization receives an allocation of tax credits, that project is helping to meet the Statewide goal of awarding 20 percent of the population credits to nonprofits; it is also helping to meet the Statewide goal of awarding 20 percent of the population credits to senior projects.

(e) The following is an example of the estimated breakdown of credits in cycles and set-asides:

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Population Credits (estimate)			$9,900,000
Less 10 percent Reserve Set-Aside			$990,000
Available for Urban & Suburban Cycles			$8,910,000
Urban Cycle—$5,346,000		Suburban Cycle—$3,564,000	
20 percent Senior		20 percent Senior	
Set-Aside	$1,069,200	Set-Aside	$712,800
20 percent Nonprofit		20 percent Nonprofit	
Set-Aside	$1,069,200	Set-Aside	$712,800
Other	$3,207,600	Other	$2,138,400

5:80-33.6 Application process

(a) Applications will be accepted beginning one month prior to the deadline date. Late and incomplete applications will not be admitted into a cycle. After the application deadline, telephone calls or other verbal communications on behalf of tax credit application from a project's development team, elected representatives, etc., will not be accepted. Written communication altering the application so as to cure a prior incompleteness or ineligibility or increase its competitiveness will not be considered. NJHMFA reserves the right to contact the applicant if the need arises.

(b) Projects must meet all of the following eligibility requirements in order to be admitted into a cycle.

1. The minimum term of the low income occupancy commitment is 30 years: a 15-year compliance period plus the 15-year extended use period required by the Internal Revenue Code. At the time the project is placed in service, the project owner must enter into an "extended low-income housing commitment agreement" as required in Section 42(h)(6) of the Code. To comply with this requirement, NJHMFA will file a Deed of Easement and Restrictive Covenant pursuant to State law.

2. The applicant must select one of the following low-income set asides: 20 percent of the units to be occupied by persons earning 50 percent or less of median income; 40 percent of the units to be occupied by persons earning 50 percent or less of median income; or 40 percent of the units to be occupied by persons earning 50 percent or less of median income (for HOME targeting projects, if applicable).

i. All rents and utility allowances shall be correctly calculated. Applicants choosing to restrict at least 50 percent of the units to households earning 50 percent or less of the area median income in order to score points under the point system established by these rules, shall be bound by such choice for the period of restriction selected as it will be reflected on the Deed of Easement and Restrictive Covenant.

3. The type of housing proposed and all amenities and services shall be described in a narrative format. It must include an explanation of how the services will be paid for as well as the need and demand for the project and its impact upon the neighborhood. Commercial space, if any, must be disclosed.

4. At the time the application is filed, the applicant shall be either the owner or developer of the project and shall demonstrate that it has site control of the property via any one of the following:

i. Fee simple title;

ii. Long-term leasehold interest;

iii. Option to purchase or lease, including evidence that options are renewable until at least the start of construction;

iv. Executed land sales contract or other enforceable agreement for acquisition of the property;

v. An executed disposition and development agreement with a public agency. Title ownership is not required for carryover allocations; or

vi. A site being developed pursuant to the NJHMFA's Camden housing initiative, under which the NJHMFA has developed a program to stimulate the construction, rehabilitation and improvement of housing in the city of Camden.

5. All local and environmental approvals shall have been obtained and must be provided. Applicants shall submit a copy of the preliminary or final site plan resolution as well as all other approvals. For substantial rehabilitation projects that are not required by the municipality to obtain site plan approval, a letter from the planning board (or appropriate municipal official) stating that the project is not subject to site plan approval shall be provided. It is the applicant's responsibility to demonstrate that the project complies with all applicable local land use and zoning ordinances and that nothing at the local level interferes with the project obtaining all necessary permits. The Code requires that the chief executive officer of the municipality in which the project is to be located be given the opportunity to comment on the project. NJHMFA will notify the chief executive officer of the municipality and allow him or her a reasonable opportunity to comment on the project. Final environmental approvals shall not be required by the application date for projects being developed pursuant to the NJHMFA's Camden housing initiative, under which the NJHMFA has developed a program to stimulate the construction, rehabilitation and improvement of housing in the City of Camden.

6. All financing information shall be disclosed in the application package. The total of all funding sources (excluding bridge financing) must equal the total project cost. Commitment letters from lending institutions for construction and permanent financing must indicate the interest rate (or the basis on which the interest rate will be set), term of the loan and all conditions. Projects requesting Balanced Housing or State HOME funds from the Department of Community Affairs (DCA) shall submit a letter from DCA evidencing that the application has been received and is complete. DCA will inform NJHMFA of the projects it intends to fund and the subsidy amounts if those projects are sufficiently competitive to receive tax credits. DCA will announce the Balanced Housing and HOME commitments at the same time NJHMFA awards the reservations of tax credits.

i. Commitment letters for grants (that is, Federal Home Loan Bank) should be firm or contain only conditions that are under the control of the sponsor, that is, grant commitments cannot be conditioned on the availability of funds. All grants whether private, Federal, State or local must be deducted from basis (unless the grantee is taking the grant into income and paying income tax on it or the grantee is making a loan to the partnership). For local government grants or loans, for example, CDBG, RCA, a copy of the county's or municipality's resolution approving the funds for the project shall be submitted with the application. For projects receiving HOME funds the applicant shall submit a copy of the participating jurisdiction's resolution approving the funds for the project or a copy of HUD form 7015.15, "Request for Release of Funds Certification" along with a copy of the participating jurisdiction's transmittal letter to HUD.

ii. Applicants of projects over 25 units representing that they will be contributing equity beyond that generated by the tax credit shall disclose the amount, the source, for example, developer fee, savings account, pledged assets, and all terms. Applicants coming out-of-pocket to fill the equity gap shall provide a letter from a certified public accountant who certifies that the applicant has the amount of cash that is needed to fill the gap. Applicants are discouraged from representing in their application that they will be using their own financial resources, when in fact, they anticipate applying for other Federal, State or local subsidies.

iii. Applicants do not need to have a syndicator at the time of application. For projects that do not have an investor at the time of application, NJHMFA shall assume a net pricing of $0.50 per tax credit dollar. However, if the applicant wants the project underwritten at a higher price, then the applicant shall include a commitment letter from an investor evidencing the net pricing and total anticipated net proceeds.

iv. For projects relying solely on equity funding from syndicators, that is, no mortgage, grants, etc., applicants shall submit evidence that the syndication equity shown in the application is attainable. Acceptable evidence is a fully executed commitment letter from the syndicator, indicating the actual pricing and the total anticipated net proceeds (which should equal the total equity funding shown in the application). The actual net price shall be used in NJHMFA's initial credit evaluation. This evaluation shall assume a mortgage will be obtained. In determining the maximum mortgage supportable by the rent roll, NJHMFA will assume the operating costs of the 15-year proforma and the general NJHMFA mortgage underwriting guidelines in N.J.A.C. 5:80-33.17.

7. In accordance with the Code, NJHMFA will examine the reasonableness of the operational costs of the project. Applicants shall demonstrate that their project is financially feasible and viable as a qualified low-income housing project throughout the tax credit compliance period. Applicants shall submit a 15-year cash flow proforma. Applicants with less than 15-year fixed rate permanent financing shall show how the project will remain feasible throughout the compliance period when, for example, the rate adjusts or a balloon

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payment comes due. A project that applied for balanced housing funds should be using the same rent structure in the tax credit application as in the application for balanced housing.

8. Resumes of the development team (to the extent they have been selected at the time of application for tax credits) shall be submitted. This includes the project owner (general partner and limited partner or syndicator if selected), developer, architect, consultant, general contractor, and management company. All team members shall disclose prior or current defaults or foreclosures or, if none, provide a statement that affirms no involvement in such actions. Misrepresentation of any information about the experience, financial capacity or defaults or foreclosures of any team member will be grounds for denial or loss of the credits and may affect the person's future participation in the program.

9. Projects over 25 units must complete the identity of interest disclosure certification as set forth in Appendix, Exhibit 2, incorporated herein by reference.

10. Applicants requesting acquisition credits shall include an attorney opinion regarding each building's eligibility for acquisition credits unless the deed(s) conveying title to the previous owner clearly shows that the building has not changed ownership in the past 10 years. As long as the sale is an arms-length transaction, the sale price listed on the deed or purchase contract will be used in determining acquisition basis. If the sale is not an arms-length transaction, the applicant shall submit an appraisal not older than six months. The acquisition basis will be limited to the lesser of the purchase price or appraised value.

11. In order to qualify for credits from the nonprofit set-aside and for the nonprofit reservation fee, applicants shall certify that they are a qualified nonprofit organization under the meaning of the Code.

12. For projects over 25 units that are claiming a prior owner's expenditures in basis, a Certified Public Accountant shall certify the amount of the eligible costs incurred by a prior owner pursuant to the Code at 42(d)(7)(B)(i) which permits a subsequent owner to claim a credit on a qualified low income building, provided the credit was allowed to the prior owner. The CPA must certify that the amount of such costs shown in the application has been spent and is accurately reflected in eligible basis.

13. All projects funded by the United States Department of Rural Economic and Community Development (formerly known as Farmer's Home Administration) must provide a letter from the State Director approving the loan and stating that the funds have been obligated.

14. All applicants anticipating receiving Section 8 Project Based Rental Assistance or any other type of rental subsidy from a government or private source shall submit with the tax credit application evidence of receipt of such assistance. Evidence of Section 8 shall include, at a minimum, a letter from the Public Housing Authority (PHA) firmly approving the project for Section 8 Project Based Assistance subject to the completion of the subsidy layering review. For projects involved in the A.F.L.-C.I.O. Pension Fund Program, a preliminary commitment from the A.F.L.-C.I.O. shall suffice. For other types of rental assistance, evidence shall include a fully executed rental assistance contract that specifies the source and term of the subsidy, as well as any timing concerns. Projects underwritten at fair market rents (FMRs) must include the Section 8 evidence described above in this paragraph; however, applicants that underwrite their project at the tax credit rents and can show their project is feasible at the tax credit rents do not have to submit evidence of Section 8 assistance.

15. Projects occupied by special needs populations are particularly hard to develop because of the risk typically associated with them. This risk emanates largely from their reliance on year-to-year operating subsidies from such sources as state and local departments of human services. Consequently, funding levels may vary depending on the governmental budget. Because this Plan awards points to these types of projects, applicants shall support their claim to serve special needs populations by providing, at a minimum, operating subsidy sources and their contact persons and the social service providers' track records (evidencing fulfillment of governmental contracts, etc.) and references. Firm operating subsidy commitments for the 30-year extended use period are not required. The applicant or general partner does not have to be the social service provider. However, the applicant shall also include with the application a copy of the executed contract or letter of agreement signed by both the owner and the social service provider that specifies the scope and frequency of the support services to be provided, the number of units to be serviced and the length of time (term) of the services contract. A special needs marketing analysis and plan shall be submitted.

16. NJHMFA encourages all owners/developers to affirmatively market their projects. For projects over 25 units, applicants shall submit an Affirmative Fair Housing Marketing Plan, which, in short, documents how the project will be marketed to those people who are least likely to apply. For instance, if the proposed development is located in an area predominantly occupied by Caucasians, outreach should be directed to non-Caucasians. Conversely, if the population is predominantly African-American, outreach should be directed to non-African-American groups. At the time the units are placed in service, the developer and rental agent shall certify that the project was affirmatively marketed.

5:80-33.7 Review process

(a) After successfully fulfilling the eligibility requirements at N.J.A.C. 5:80-33.6(b), applications will be admitted into the cycle. NJHMFA will undertake an initial credit evaluation (or needs analysis) by reviewing the application and the cost and basis breakdown for compliance with cost benchmarks and underwriting standards (see N.J.A.C. 5:80-33.17). NJHMFA will perform the first of the needs evaluations pursuant to the Code's mandate to housing credit agencies to allocate credits to a project in an amount not to exceed that necessary for its financial feasibility and its viability as a qualified low-income housing project throughout the compliance period. NJHMFA also performs these needs evaluations at the time the allocation is made and at the time the project is placed in service.

(b) Applications will receive points based on the point system for the particular cycle in which they compete. In the event of a tie score, projects will be ranked according to the tie-breaker system for the particular cycle in which they are competing. Set-asides will be filled within each cycle by first making reservations to the highest scoring senior projects until the senior set-aside is met and next making reservations to the highest scoring nonprofit-sponsored projects until the nonprofit set-aside is met. Then, reservations will be awarded to the applications with the highest scores and to the applications that win the tie-breakers.

(c) The point system for the Urban Cycle shall be as follows:

1. Family projects—20 points.

2. Targeted cities and targeted neighborhoods—20 points maximum broken down as follows: targeted city—10 points; or targeted neighborhood—an additional 10 points if project is located in a targeted neighborhood within the targeted city.

i. Targeted cities and targeted neighborhoods are designed to target resources to key areas in the State, in order to increase the positive impact to those areas. If the targeted neighborhoods are not announced at least one month prior to the application deadline, only targeted city shall apply and the full 20 points shall be awarded.

3. Special needs projects—10 points:

i. This category is designed to encourage development and preservation of housing for special needs populations.

4. Increasing the low income set-aside—20 points:

i. This category is designed to encourage projects with set-asides exceeding the minimum required by Code, namely the 40-60 and 20-50 set-asides, by setting aside at least 50 percent of the units at 50 percent of the area median income. The project's set-aside selected in the application will be reflected in the deed restriction.

5. Period of restriction—20 points:

i. This category is designed to encourage projects to remain low income beyond the 30 years required. Projects that extend the extended use period by five years or more will receive the 20 points. The period of restriction stated in the application will be the number of years that the property will be deed restricted. 6. Substantial rehabilitation/adaptive reuse—10 points:

6. Substantial rehabilitational adaptive reuse—10 points:

i. This category is designed to encourage projects undertaking substantial rehabilitation and adaptive reuse.

7. Minority and women business enterprises—10 points:

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i. This category is designed to encourage the utilization of certified minority business enterprises (MBE) and women business enterprises (WBE) as subcontractors and on the development team. MBEs and WBEs are certified by the New Jersey Department of Commerce and Economic Development. Developers who are committed to using MBEs and WBEs should submit a MBE/WBE Certification. This states that 15 percent of the construction cost will be let to MBEs and WBEs in the development of the project. MBEs and WBEs can be a part of the development team as well as subcontractors. As part of the placed in service certification, the developer and accountant must certify that at least 15 percent of the construction cost was expended on MBEs/WBEs. If the project did not utilize 15 percent MBE/WBE, and a MBE/WBE Certification was submitted, NJHMFA shall recapture the allocation.

8. Existing HUD-held or HUD-insured projects undergoing substantial rehab—10 points:

i. This category is designed to enable substantial rehabilitation of projects that are on HUD's Troubled Project list. Applicants shall show that they have exhausted all other HUD resources.

(d) In the event of a tie score under the point system for the Urban cycle, reservations will be made in the following priority order:

1. Targeted Cities—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

2. Family Projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth to the project utilizating public housing waiting lists.

3. Senior Projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

(e) The point system for Suburban Cycle shall be as follows:

1. Family projects which:

i. Meet a COAH or Court-ordered fair share obligation—20 points; or

ii. Do not meet a COAH or Court-ordered fair share obligation—10 points.

2. Senior projects that help a municipality meet a COAH or Court-ordered fair share obligation—10 points.

3. Special needs projects—10 points:

i. This category is designed to encourage development and preservation of housing for special needs populations.

4. Increasing the low income set-aside—20 points:

i. This category is designed to encourage projects with set-asides exceeding the minimum required by Code, namely, the 40-60 and 20-50 set-asides, by setting aside at least 50 percent of the units at 50 percent of the area median income. The project's set-aside selected in the application will be reflected in the deed restriction.

5. Period of restriction—20 points:

i. This category is designed to encourage projects to remain low income beyond the 30 years required. Projects that extend the extended use period by five years or more will receive the 20 points. The period of restriction stated in the application will be the number of years that the property will be deed restricted.

6. Substantial rehabilitation/adaptive reuse—10 points:

i. This category is designed to encourage projects undertaking substantial rehabilitation and adaptive reuse.

7. Minority and women business enterprises—10 points:

i. This category is designed to encourage the utilization of certified minority business enterprises (MBE) and women business enterprises (WBE) as subcontractors and on the development team. MBEs and WBEs are certified by the New Jersey Department of Commerce and Economic Development. Developers who are committed to using MBEs and WBEs should submit a MBE/WBE Certification. This states that 15 percent of the construction cost will be let to MBEs and WBEs in the development of the project. MBEs and WBEs can be a part of the development team as well as subcontractors. As part of the placed in service certification, the developer and accountant must certify that at least 15 percent of the construction cost was expended on MBEs/WBEs. If the project did not utilize 15 percent MBE/WBE, and a MBE/WBE Certification was submitted, NJHMFA shall recapture the allocation.

8. Existing HUD-held or HUD-insured projects undergoing substantial rehab—10 points:

i. This category is designed to enable substantial rehabilitation of projects that are on HUD's Troubled Project list. Applicants must show that they have exhausted all other HUD resources.

(f) In the event of a tie score under the point system for the Suburban Cycle, reservations will be made in the following priority order:

1. COAH Obligation—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

2. Family Projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

3. Senior Projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

(g) The point system for Final Cycle shall be as follows:

1. Family projects located in urban areas—20 points:

i. This category is designed to encourage family projects that are located in urban areas.

2. Suburban projects meeting a COAH obligation: family projects—20 points; and senior projects—10 points.

i. This category is designed to encourage projects that are helping a suburban municipality meet a COAH or court-ordered fair share obligation.

3. Targeted cities and targeted neighborhoods: This category is designed to target resources to key areas in the State, in order to increase the positive impact to those areas: targeted city—10 points; and targeted neighborhood—an additional 10 points if project is located in a targeted neighborhood within the targeted city.

i. Targeted cities and targeted neighborhoods are designed to target resources to key areas in the State, in order to increase the positive impact to those areas. If the targeted neighborhoods are not announced at least one month prior to the application deadline, only targeted city shall apply and the full 20 points shall be awarded.

4. Special needs projects—10 points:

i. This category is designed to encourage development and preservation of housing for special needs populations.

5. Increasing the low income set-aside—20 points:

i. This category is designed to encourage projects with set-asides exceeding the minimum required by Code, namely, the 40-60 and 20-50 set-asides, by setting aside at least 50 percent of the units at 50 percent of the area median income. The project's set-asides selected in the application will be reflected in the deed restriction.

6. Period of restriction—20 points:

i. This category is designed to encourage projects to remain low income beyond the 30 years required. Projects that extend the extended use period by five years or more will receive the 20 points. The period of restriction stated in the application will be the number of years that the property will be deed restricted.

7. Substantial rehabilitation/adaptive reuse—10 points:

i. This category is designed to encourage projects undertaking substantial rehabilitation and adaptive reuse.

8. Minority and women business enterprises—10 points:

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i. This category is designed to encourage the utilization of certified minority business enterprises (MBE) and women business enterprises (WBE) as subcontractors and on the development team. MBEs and WBEs are certified by the New Jersey Department of Commerce and Economic Development. Developers who are committed to using MBEs and WBEs should submit a MBE/WBE Certification. This states that 15 percent of the construction cost will be let to MBEs and WBEs in the development of the project. MBEs and WBEs can be a part of the development team as well as subcontractors. As part of the placed in service certification, the developer and accountant must certify that at least 15 percent of the construction cost was expended on MBEs/WBEs. If the project did not utilize 15 percent MBE/WBE, and a MBE/WBE Certification was submitted, NJHMFA shall recapture the allocation.

9. Existing HUD-held or HUD-insured projects undergoing substantial rehabilitation—10 points:

i. This category is designed to enable substantial rehabilitation of projects that are on HUD's Troubled Project list. Applicants shall show that they have exhausted all other HUD resources.

(h) In the event of a tie score under the point system for the Final cycle, reservations will be made in the following priority order:

1. Targeted cities—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

2. COAH obligation—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

3. Urban family projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

4. Suburban family projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

5. Urban senior projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee, and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

6. Suburban senior projects—if still a tie:

i. First, to projects offering a social services model; if still a tie:

ii. Second, on the basis of geographic distribution; if still a tie:

iii. Third, to the project with the most percentage points below the maximum developer fee; and if still a tie:

iv. Fourth, to the project utilizing public housing waiting lists.

5:80-33.8 Reservation process

(a) On the basis of the point and tiebreaker systems, staff will make reservation award recommendations to the Tax Credit Committee. The Tax Credit Committee will consist of the Commissioner of the Department of Community Affairs, or his or her designee, the Executive Director of NJHMFA and three members of the NJHMFA executive staff. The Committee will review the rankings and tie-breaker decisions as well as requests for reservations from the Reserve Set-Aside. Committee decisions are final. All applicants will be notified in writing whether their projects received a reservation or not and the basis for the decision. A reservation commitment letter will be mailed to all reservation recipients. Recipients have 30 days from the date of the reservation letter to pay the reservation fee. A reservation is not complete until the reservation fee is paid. The Reservation Fee Schedule is as follows:

1. Forprofit-sponsored Projects: One percent of the allocation amount over the 10-year credit period

2. Nonprofit-sponsored Projects: One-half of one percent of the allocation amount over the 10-year credit period.

5:80-33.9 Requests for additional credits

(a) Should additional credits be awarded to a project, a reservation fee for the additional credit amount must be provided. All projects seeking additional credits shall have the developer fee that is shown in basis "frozen" at the amount shown on the most recent Sponsor Certification.

(b) Applicants seeking an allocation of additional credits are divided into three categories:

1. Projects from the previous calendar year. These projects shall apply to the Reserve set-aside. These are projects that received allocations in the previous calendar year that, because demand for credits exceeded the supply, were not allocated the full credit amount supportable by the project's eligible basis. Eligible basis cannot exceed that shown on their previous Carryover Certification. Applicants must submit a new application and application fee by the Urban/Suburban Cycle deadline date. Projects will be scored and ranked according to the Final Cycle's point system and tie-breaker system.

2. Hardship Requests of $100,000 or less—Apply to the Reserve Set-Aside. Only hardship requests for additional tax credits of $100,000 or less are eligible to apply for credits from the Reserve Set-Aside. There are no application deadlines to apply to the Reserve. NJHMFA will award additional credits out of the Reserve Set-Aside on a first-come-first-served basis subject to NJHMFA's evaluation of the request and availability of credits. The developer fee shown in eligible basis cannot exceed that shown on the previous Sponsor Certification. Applicants shall submit all of the following before NJHMFA will consider the request:

i. Reapplication fee. The reapplication fee is not required when a project reapplies in the Final Cycle after failing to secure credits in the Urban or Suburban Cycle and only then if there are no changes to the application. In applying for a hardship request for additional credits, it is a given that changes have occurred since the initial application;

ii. Reapplication Certification;

iii. Explanation why additional credits are being sought plus supporting documentation;

iv. Letter from the investor (if known) which addresses the eligibility and specific need for the additional credits. If the applicant is still incurring costs and is using a projection of costs and basis in his or her application for additional credits, the investor must verify the projection; and

v. Release of the previously reserved credits effective upon the NJHMFA approval of an increased reservation. This is required only for projects that seek an increase in the reservation amount that they received that same year, for example, received reservation in urban cycle and applied to Reserve later in year for an incrase in the reservation.

3. Hardship Requests of over $100,000—Apply during a cycle. Hardship requests for additional credits exceeding $100,000 will be handled in a scheduled cycle. The developer fee shown in eligible basis cannot exceed that shown on the previous Sponsor Certification. Applicants shall complete an application and the following in order to be deemed a complete application:

i. Reapplication fee. The reapplication fee is not required when a project reapplies in the final cycle after failing to secure credits in the urban or suburban cycle and only then if there are no changes to the application. In applying for a hardship request for additional credits, it it is a given that changes have occurred since the initial application;

ii. Reapplication Certification;

iii. Explanation why additional credits are being sought plus supporting documentation;

iv. Sponsor Certification with an audited breakdown of costs and basis. An independent C.P.A. shall have audited the project and certified the Breakdown of Costs and Basis (which includes disclosure of all funding sources and amounts). For projects still incurring eligible costs, for example, security system, landscaping, NJHMFA will consider awarding

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additional credits based on the audited Breakdown of Costs and Basis incurred to date and the applicant's projection of costs and basis incurred through the end of the first year of the credit period;

v. Letter from the investor (if known) which addresses the eligibility and specific need for the additional credits. (If the applicant is still incurring costs and is using a projection of costs and basis in his or her application for additional credits, the investor must verify the projection.); and

vi. Release of the previously reserved credits effective upon the NJHMFA approval of an increased reservation. Required only for projects that seek an increase in the reservation amount that they received that same year, for example, received reservation in urban cycle and applied in final cycle for an increase in the reservation.

5:80-33.10 Binding commitments

There are no binding commitments from the tax credit authority of future years allowable under this Qualified Allocation Plan.

5:80-33.11 Returning credits

(a) Projects unable to utilize their allocation should return their allocation to the NJHMFA as soon as possible via letter. NJHMFA will send a letter acknowledging receipt of the return. Returned credits are deposited into the Reserve.

(b) As an incentive to turn in unused credits early, projects that return credits by November 15 will have their previously paid reservation fee credited toward their next reservation fee. Projects returning credits after November 15 that receive a reservation the next year will have to pay a new reservation fee.

5:80-33.12 Credit evaluation (needs analysis)

(a) In accordance with Section 42(m)(2), NJHMFA evaluates the need for the tax credit at the application stage, at carryover, if applicable, and before completing the IRS Form 8609, that is, when the building is placed in service. During each evaluation, if the amount of the tax credit request is not needed for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the tax credit compliance period, the amount of the tax credit will be reduced to the needed amount. The determination of whether the amount requested is needed for financial feasibility and continued viability of the project will include an examination as to whether there have been increases or decreases in project costs, other funding sources or rental subsidies which would result in a higher allocation than needed. For each evaluation, a Sponsor Certification in the format supplied in the application must be submitted. On a case-by-case basis, NJHMFA may extend its filing deadline if the sponsor can show good cause.

(b) At carryover, the Carryover Sponsor Certification form must include an independent C.P.A. certification on the Breakdown of Costs and Basis page that the 10 percent test has been met; that all sources and uses shown are accurate; and that the costs shown in basis are allowable under the Code. The filing deadline is November 15.

(c) As soon as possible after the building has placed in service, the owner must submit a Placed in Service Sponsor Certification showing all sources (including net syndication proceeds), uses and basis as well as the pricing from the limited partner investor. The developer fee shown in eligible basis cannot exceed that shown on the Reservation or Carryover Certification. The filing deadline is November 15.

(d) In performing the final evaluation of the project's need for the tax credits, NJHMFA will use the actual net pricing achieved with the investor. Any substantive changes to the project's financing plan or costs must be explained in detail and may cause the project to be reconsidered by the NJHMFA.

(e) For projects over 25 units, an independent C.P.A. must audit the project and certify to the costs and basis on Attachment A of the Placed in Service Sponsor Certification set forth in Appendix, Exhibit 3, incorporated herein by reference. The C.P.A. must also verify the actual pricing achieved with the investor. The developer fee shown in eligible basis cannot exceed that shown on the Reservation or Carryover Certification set forth in Appendix, Exhibit 3. To make sure that the placed in service paperwork is submitted to NJHMFA by the November 15th deadline, sponsors must ensure that the cost certification process begins immediately upon construction completion. In fact, if a project is already placed in service the same year in which it receives a reservation, the cost certification process should begin before construction completion in order to avoid jeopardizing the reservation. For projects still incurring eligible costs, NJHMFA, when performing its placed in service needs analysis, will consider the owner's reasonable projection of costs and basis incurred through the end of the first year of the credit period in addition to the audited Breakdown of Costs and Basis.

(f) The Code requires that NJHMFA reduce the credit amount based upon need; however, this does not mean that NJHMFA will jeopardize the long-term financial feasibility and viability of the project by "arbitrarily" taking back credits. For example, if the equity market improved so that projects were able to get better pricing from investors, NJHMFA will not necessarily reduce the credit on those projects that use the excess credits to cover cost overruns, provide betterments in the project such as upgrading the security system, landscaping, provision of appliances such as washers and the like. NJHMFA will not allow these additional funds to be used to increase the developer fee eligible basis amount over that shown on the previous carryover.

5:80-33.13 Extended use agreement

Section 42(h)(6) of the Internal Revenue Code requires the project owner to enter into an extended low-income housing commitment agreement that adds an additional 15 year low-income occupancy requirement to the initial 15 year compliance period. It must be recorded in order to claim the tax credits when filing Federal tax returns. Owners shall complete the NJHMFA's Deed of Easement and Restrictive Covenant. Upon receipt of a complete and fully executed agreement, NJHMFA will file the restrictive covenant pursuant to State law.

5:80-33.14 Obtaining the 8609

Upon completion of the final needs evaluation, filing of the extended use agreement and payment of the monitoring fee, the NJHMFA will complete Part I of the IRS Form 8609 and will forward a copy, as filed with the IRS, to the project owner. An 8609 is issued for each building in the project. (Owners should be sure to make copies of the signed IRS Form 8609 as a copy must be filed each year with Federal tax returns.)

5:80-33.15 Additional documentation

NJHMFA reserves the right to ask for any documentation necessary throughout the application, reservation, carryover and placed in service processes. NJHMFA will also require all syndication documents.

5:80-33.16 Compliance monitoring

(a) Owners/agents are required to keep records for each qualified low income building in the project which will show for each year of the compliance period the following information:

1. The total number of residential rental units in the building, including the number of bedrooms and the size in square feet of each residential rental unit;

2. The percentage of residential rental units in the building that are low income;

3. The rent charged on each residential rental unit in the building, including any utility allowances;

4. The number of occupants in each low income unit, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2) (as in effect before the Revenue Reconciliation Act of 1989);

5. The low income unit vacancies in the building and information that shows when and to whom the next available units were rented;

6. The annual income certification of each low income tenant per unit. For an exception to this requirement, see Section 42(g)(8)(B) which provides a special rule for a 100 percent low-income building;

7. Documentation to support each low income tenant's income certification, that is, a copy of the tenant's Federal income tax return, W-2 form or income verification from third parties such as employers or agencies paying unemployment compensation. Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937, not in accordance with the determination of gross income for Federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit

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under Section 42(g). For an exception to this requirement, see Section 42(g)(8)(B) which provides a special rule for a 100 percent low-income building;

8. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

9. The character and use of the non-residential portion of the building included in the building's eligible basis under Section 42(d), that is, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project.

(b) Owners/agents are required to retain the records described above for at least six years after the due date (with extensions) for filing the Federal income tax return for that year. The records for the first year of the credit period, however, must be retained for the entire compliance period plus six years beyond the due date (with extensions) for filing the Federal income tax return for the last year of the compliance period of the building (21 years total). Therefore, records for the first year of the compliance period must be retained for 21 years. Records for each year thereafter must be retained for six years after filing the Federal income tax return for that particular year.

(c) The owner/agent of a low income housing project shall certify, under penalty of perjury, annually to the Agency for each year of the compliance period that for the preceding 12 month period:

1. The project met the requirements of the 20-50 test under Section 42(g)(1)(A) or the 40-60 test under Section 41(g)(1)(B) or the 40-50 test under Section 42(i)(2)(E)(i); whichever minimum set aside test was applicable to the project; and if applicable to the project, the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;

2. There was no change in the applicable fraction of any building in the project (as defined by Section 42(c)(1)(B)), or that there was a change and a description of the change;

3. The Owner received an annual income certification on each low income tenant, and documentation to support that certification; or in the case of a tenant receiving Section 8 Housing Assistance Payments, the statement from a public housing authority declaring that the tenant's income does not exceed the applicable limit under Section 42(g). For an exception to this requirement, see Section 42(g)(8)(B) which provides a special rule for a 100 percent low-income building;

4. Each low income unit in the project was rent restricted under Section 42(g)(2);

5. All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii));

6. Each building in the project was suitable for occupancy, taking into account local health, safety and building codes;

7. There was no change in the eligible basis of any building in the project, or if there was a change, the nature of the change, (that is, a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);

8. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

9. If a low income unit in the project became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

10. If the income of a tenant of a low income unit who has previously been verified, increases to above 140 percent of the applicable limited allowed in Section 42(g)(2)(D)(ii), that unit may continue to be counted as a low income unit as long as the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

11. An extended low income housing commitment as described in Section 42(h)(6) was in effect for buildings subject to Section 7108-(c)(1) of the Revenue Reconciliation Act of 1989.

(d) The Agency requires the owners of all low income housing projects to submit annually to the Agency for review the Annual Project Certification and the Occupancy Status Report which requires information on tenant income and rent for each low income unit. In addition, throughout the year, owners of at least 20 percent of all tax credit projects will be required to submit to the Agency for compliance review the following information for a minimum of 20 percent of all low income units (units will be identified by the Agency):

1. A copy of the annual income certification for the household;

2. The documentation the owner has received to support the certification; and

3. The rent record.

(e) The Agency will select which projects will undergo Agency review and give owners reasonable notice that their project has been chosen as well as identify which documents will need to be submitted. Reviews may occur more frequently than on a 12 month basis, provided that all months within each 12 month period are subject to certification. NJHMFA charges a fee for these services in the amount of $100.00/unit per year for the 15-year compliance period or a one-time up-front fee of $750.00 per unit.

(f) The Agency reserves the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period and have access to all books and records which would document compliance.

(g) Upon determination by the Agency of noncompliance with Section 42 of the Internal Revenue Code or other relevant rules and regulations, the Agency will give prompt notice to the owner of the violation. The owner will then be given sufficient notice to correct the violation. The Agency is required to notify the IRS, within 45 days after the end of the correction period, of the noncompliance and whether the owner has or has not corrected the violation.

5:80-33.17 Underwriting standards

(a) No project will be allocated more than $2,000,000 in credits in any one calendar year.

(b) The amount of developer fee allowed in eligible basis is limited to 15 percent of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, costs associated with syndication and step-in-the-shoes costs exceeding the acquisition price.

1. However, a developer fee of up to 20 percent (of total development cost excluding land, working capital, marketing expenses, escrows, operating deficit reserves, costs associated with syndication and step-in-the-shoes costs exceeding the acquisition price) is allowed for the following types of housing:

i. Scattered site single-family or duplex housing;

ii. Projects of 25 units or less; and

iii. Housing for special needs projects.

2. Professional fees not included in the developer fee are the fees for the architect, engineer, lawyer, accountant, surveyor, appraiser, professional planner, historical consultant and environmental consultant. All other consultant fees shall be included in the developer fee and are not allowed to be shown as separate line items on the tax credit application.

3. The developer fee contained in the application will be the maximum fee recognized by the Agency at the time of cost certification. During the scoring and ranking process, if there is a tie score, one of the tie-breaker criteria is a lower developer fee. However, the developer fee should not go below a "floor" of eight percent.

(c) For projects over 25 units in size, where there is an identity of interest between the developer and contractor, applicants are limited in the amount of developer fees and contractor profit allowed in basis. The combined developer fee/general contractor profit may not exceed 18 percent of total cost minus land, working capital, marketing, escrows, operating deficit reserves, costs associated with syndication and step-in-the-shoes costs exceeding the acquisition price.

1. An identity of interest exists between the owner (or developer) and the general contractor if any of the following conditions exist:

i. When there is any financial interest between the developer and the general contractor;

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ii. When one or more of the officers, directors, stockholders or partners of the developer is also an officer, director, stockholder or partner of the general contractor; or

iii. When any officer, director or stockholder of the developer has any interest whatsoever in the general contractor.

(d) The credit amount is determined by multiplying the qualified basis by the applicable percentage rate. It is the intention of this Plan to use nine percent as the applicable percentage rate for new construction and rehabilitation and four percent as the rate for acquisition and federally funded projects. NJHMFA reserves the right, as permitted by the tax credit regulations, to use an applicable rate below the maximum nine percent and four percent and to issue less than the maximum credit allocation otherwise supportable by the project's eligible basis. The applicable Federal rate of the month in which the building is placed in service or applicable Federal rate of the lock-in agreement will still appear on the building's 8609; however, the credit amount cannot exceed the amount NJHMFA allocated to the project. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the project by the NJHMFA.

(e) Financing arrangements will be evaluated to ensure that projects are not structured to artificially increase basis. Examples:

1. Drawing down entire bridge or secondary loans at construction closing instead of using such financing on an as needed basis.

2. Including accrued construction period interest from soft second loans in basis even though payment of the interest is deferred indefinitely as long as the building remains low income or until sale.

3. Assuming an interest rate far in excess of the market. (Secondary or bridge financing between corporate affiliates should not exceed prime plus two points). The excess interest charges in such cases will not be considered in eligible basis.

(f) While the tax law does not require allocating agencies to place restrictions on the development cost of any project, it does require them to consider the reasonableness of the developmental and operational costs of the project. The NJHMFA will examine building construction and land costs in comparison to the certified cost data on existing tax credit projects and other non-luxury multifamily housing in the same geographic areas. Consideration will be given to "high costs" projects provided that the costs are justifiable and reasonable under the circumstances and can be attributed to unique project characteristics (such as location in difficult-to-develop area, limited commercial space, or tenant services or common areas essential to the character of the project) which are consistent with the housing needs and priorities of the allocation plan.

(g) The amount of contingency in eligible basis cannot exceed 10 percent of the total depreciable basis.

(h) Intermediary costs include, but are not limited to, developer fees (which include organizational costs and loan consultant fees), legal, planning, accounting, architectural and engineering fees, syndication costs and fees charged by negotiating agents (for example, realtors, etc). They do not include those costs properly allocated to and payable by the syndicator (such as SEC registration and sales commissions). Pursuant to Internal Revenue Code 42(m)(2)(B)(iii), NJHMFA shall consider the percentage of the housing credit dollar amount used for project cost other than the cost of intermediaries but the intermediary cost standard shall not be applied so as to impede the development of projects in hard-to-develop areas.

EXHIBIT 1
LIST OF URBAN AREAS FOR LOW-INCOME
HOUSING TAX CREDITS

Asbury Park City
Bayonne City
Belleville Township
Bloomfield Township
Bridgeton City
Camden City
Carteret Borough
East Orange City
Elizabeth City
Garfield City
Glassboro Borough
Gloucester City
Gloucester Township
Hillside Township
Hoboken City
Irvington Township
Jersey City
Keansburg Borough
Kearny Town
Lakewood Township
Lindenwold Borough
Lodi Borough
Long Branch City
Millville City
Monroe Township (Gloucester)
Mount Holly Township
Neptune Township
New Brunswick City
Newark City
North Bergen Township
Old Bridge Township
Orange City Township
Passaic City
Paterson City
Paulsboro Borough
Pemberton Township
Penns Grove Borough
Pennsauken Township
Perth Amboy City
Phillipsburg Town
Plainfield City
Pleasantville City
Rahway City
Roselle Borough
Salem City
Trenton City
Union City
Vineland City
West New York Town
Willingboro Township
Winslow Township
Woodbridge Township
Woodbury City

EXHIBIT 2
IDENTITY OF INTEREST CERTIFICATION

☐ Application
☐ Placed in Service

An identity of interest exists between developer and general contractor, if any of the following conditions exist:

1. When there is any financial interest between the developer and the general contractor;
2. When one or more of the officers, directors, stockholders or partners of the developer is also an officer, director, stockholder or partner of the general contractor;
3. When any officer, director or stockholder of the developer has any interest whatsoever in the general contractor;
4. When the general contractor advances any funds to the developer.

The undersigned, as duly authorized representative of _____ _____, the developer and/or applicant for an allocation by the New Jersey Housing and Mortgage Finance Agency ("Agency") of Low Income Housing tax Credit pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, for the project known as _____ certifies as follows:

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☐ There is no Identity of Interest as described above between developer and the general contractor.
☐ There is an Identity of Interest as described above between developer and the general contractor.

Any applicant or recipient of tax credits which certifies to an identity of interest will be limited to a combined developer fee general contractor profit of 18% of total project cost less expenditures on land, working capital, marketing, escrows, operating deficit reserves, syndication, and costs associated with step-in the shoes basis exceeding acquisition price.

CERTIFICATION

I, _____, hereby represent and state that the foregoing information and any attachments thereto, to the best of my knowledge, are true and complete. I acknowledge that the New Jersey Housing and Mortgage Finance Agency is relying on the information contained herein and thereby acknowledge that the undersigned entity is under a continuing obligation, from the date of this Certification through the completion of the Project, to notify the Agency in writing of any changes to the answers or information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am and/or the undersigned entity is subject to criminal prosecution under the law.

Sworn and subscribed to before
the undersigned Notary Public
on the date appearing below

_____ _____ (L.S.)
Witness

_____
Print Name

_____
Print Title

(INDIVIDUAL OR PARTNERSHIP FORM)

BE IT REMEMBERED, that on _____, 199_____, before me, the subscriber, personally appeared _____, who, I am satisfied, the person named in and who executed the within Instrument, and thereupon he/she acknowledged that he/she signed, sealed and delivered the same as his/her act and deed, for the purposes therein expressed.

_____
Notary Public

(CORPORATE FORM)

BE IT REMEMBERED, that on _____, 199_____, before me, the subscriber, personally appeared _____, who, being duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Secretary of _____, Corporation named in the within Instrument; that _____is the President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that deponent well knows the corporate seal of said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in the presence of deponent, who thereupon subscribed his/her name thereto as attesting witness.

_____
Notary Public

EXHIBIT 3
SPONSOR'S CERTIFICATION

☐ Application
☐ Re-Application
☐ Carryover
☐ Placed in Service/Allocation

State of _____
SS.
County of _____

The undersigned, as the duly authorized representative of _____, the developer/applicant and/or the recipient of an allocation by the New Jersey Housing and Mortgage Finance Agency ("Agency") of a Low-Income Housing Tax Credit pursuant to Section 42 of the Internal Revenue Code of 1986 ("Code"), as amended, for the project known as _____ acknowledges and certifies as follows:

1. ***You must check and complete one of the following:***
   ☐ It is anticipated that the project will be placed in service on, or prior to, December 31, _____
   -OR-
   ☐ The project was placed in service on _____.

2. The developer/applicant/recipient fully intends to abide by all applicable federal laws and regulations relating to the Low-Income Housing Tax Credit.

3. The developer/applicant/recipient is not relying on any Agency statements or representations as to the value of the allocation of the low-income housing tax credit, including, but not limited to, representations or statements concerning the initial and continuing project eligibility under applicable federal law, calculation of qualified basis and eligible basis, determination of whether federal subsidy is involved, term of the tax credit, term of the compliance, potential impact of future changes in federal law and applicability of recapture requirements and penalties.

4. The developer/applicant/recipient must enter into an extended low-income housing commitment with the Agency pursuant to Section 42(h)(6) of the Code in which the taxpayer and his/her successors agree to meet the elected set aside and the applicable fraction of low-income occupancy for an extended use period of at least fifteen years beyond the fifteen-year compliance period (subject to possible termination of the extended use period under circumstances described in the Code). The agreement incorporates a Deed of Easement and Restrictive Covenant to be executed by the tax credit recipient and recorded by the Agency. The Deed of Easement and Restrictive Covenant must be executed in the form required by the Agency and delivered to the Agency prior to the time of allocation (IRS Form 8609). It is further acknowledged that the terms of the Deed of Easement and Restrictive Covenant will be enforceable by the Agency or by qualified prospective, present or former low-income occupants of the Project in the state courts during the extended use period. The Deed of Easement and Restrictive Covenant may have a negative effect on the future value of the Project.

The undersigned further acknowledges that the developer/applicant/recipient will need the consent of any present mortgage holders on the subject property to record the restrictive covenant since any foreclosing taxpayer may neither evict without cause nor increase the gross rent on low-income units until three years after he/she forecloses on the project and terminates the extended use period.

5. The development costs of the project (as of this time) as detailed in the attached breakdown of costs and basis were prepared by the developer/applicant/recipient or his/her agents and are accurate to best of his/her knowledge. All funding commitments recited in the Agency Low-Income Tax Credit Application are firm commitments.

6. Section 42(m)(2) of the Code dictates that the housing credit agency shall not allocate tax credits exceeding the amount needed for project feasibility. Consequently, the developer/applicant/recipient consents with this certification to a possible reduction of credits subsequent to needs analyses conducted by HMFA at carryover and placed in service dates.

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7. If this is a reapplication, ***you must check one of the following***:
   - ☐ Project did not receive full credit amount supportable by the project's eligible basis in a prior year
   - ☐ Project did not receive allocation in a previous cycle
   - ☐ Project is seeking additional credits
8. If this is a reapplication, ***you must check one of the following:***
   - ☐ NO changes to the previously submitted application have been made.
   - ☐ Changes have been made in this reapplication. Documentation substantiating these changes are included with this reapplication as specified by the Qualified Allocation Plan.

I understand that it is a criminal offense to make a false statement or a purposely misleading statement on this Certification and that if I do, I and the entity which I represent, will be subject to criminal prosecution, possible loss of tax credit allocation, and disqualification from future participation in the Low Income Housing Tax Credit Program in New Jersey.

Sworn and subscribed to
before the undersigned
Notary Public on the date
appearing below:

_____ _____(L.S.)
Witness (Secretary of Corporation)

_____
(Print Name and Title)

ACKNOWLEDGEMENT

(INDIVIDUAL OR PARTNERSHIP FORM)

BE IT REMEMBERED, that on _____, 199_____, before me, the subscriber, personally appeared, _____ who, I am satisfied, is the person named in and who executed the within Instrument, and thereupon he/she acknowledged that he/she signed, sealed and delivered the same as his/her act and deed, for the uses and purposes therein expressed.

_____
Notary Public

(CORPORATE FORM)

BE IT REMEMBERED, that on _____, 199_____, before me, the subscriber, personally appeared _____, who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Secretary of _____ the Corporation named in the within Instrument; that _____ is the President of said Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper resolution of the Board of Directors of the said Corporation; that deponent well knows the corporate seal of said Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said President as and for the voluntary act and deed of said Corporation, in the presence of deponent, who thereupon subscribed his/her name thereto as attesting witness.

_____
Notary Public

EDUCATION

(a)

STATE BOARD OF EDUCATION

State Library Assistance Programs
Readoption with Amendments: N.J.A.C. 6:68
Adopted Repeal and New Rules: N.J.A.C. 6:68-3

Proposed: February 21, 1995 at 27 N.J.R. 620(a).

Adopted: May 9, 1995 by State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: May 12, 1995 as R.1995 d.290, **without change**.

Authority: N.J.S.A. 18A:2-2, 18A:4-15, 18A:74-3.3, 18A:74-6, 18A:74-10 and 18A:74-14.

Effective Date: May 12, 1995, Readoption;
June 5, 1995, Amendments, Repeal and New Rules.

Expiration Date: May 12, 2000.

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

Executive Order No. 27 Statement

The readopted rules, amendments and new rules do not implement Federal requirements and do not exceed any Federal requirements.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 6:68.

Full text of the adopted amendments and new rules follows:

CHAPTER 68

STATE LIBRARY AID AND GRANTS

6:68-1.1 Purpose

The purpose of this chapter is to describe the library grant programs available from State funds and to establish general rules for the application process.

6:68-1.2 Definitions

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

. . .

"Access" means accessibility on site, interlibrary loan of materials, citation/location of materials on databases and cataloging of materials.

. . .

6:68-1.3 Grant application procedures

(a) (No change.)

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the publication "Grants Bulletin."

6:68-2.7 Reduction of aid for failure to meet minimum requirements

(a) Failure to meet the requirements of N.J.A.C. 6:68-2.2 and 2.3 will result in the loss of all per capita State Aid.

(b) Failure to meet the requirements specified in N.J.A.C. 6:68-2.4 through 2.6 will result in the loss of per capita State Aid by a percentage in proportion to the number of requirements not yet achieved, each requirement to have the following weights:

1. N.J.A.C. 6:68-2.4:
i. Employees: 30 percent.
2. N.J.A.C. 6:68-2.5:
i. Basic book collection: 10 percent.
ii. Annual purchases: 30 percent.
iii. Periodicals: 10 percent.
3. N.J.A.C. 6:68-2.6:
i. Hours of service: 20 percent.

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SUBCHAPTER 3. INCENTIVE FOR LARGER SERVICE UNITS GRANT PROGRAM

6:68-3.1 Purpose

The rules in this subchapter provide for the development and expansion of larger units of library service to the residents of New Jersey, pursuant to the provisions of the State Library Aid Law (P.L. 1967, c.271), N.J.S.A. 18A:7A-6.

6:68-3.2 Eligibility

Any public library is eligible to participate in the program.

6:68-3.3 Categories in award of grants

(a) Each approvable application shall be assigned to one of the two categories as follows:

1. Municipal library assistance aid for the planning and development of joint libraries and cooperative services;

2. County library assistance aid for the planning and development of expanded county library service.

(b) The priority of categories and the percentage of funds allocated to each category shall be established each year by the State Librarian.

SUBCHAPTER 4. EMERGENCY AID

6:68-4.1 Purpose

The purpose of this emergency aid grant program is to help alleviate unforeseeable, emergency conditions in any public library.

6:68-4.4 Method of application

(a) An intent to file a request for emergency aid must be received by the State Librarian within 90 days of damage or loss.

(b) An actual application for emergency aid must be received by the State Librarian within one year of damage or loss.

(c) A letter of application for emergency aid under N.J.S.A. 18A:74-6 must be submitted to the State Librarian. This letter of application, made by an officer of the library's board of trustees, shall include:

1.-5. (No change.)

6. An assurance that the library holds adequate insurance; and

7. Any additional reports or information the State Librarian may request.

SUBCHAPTER 5. LIBRARY CONSTRUCTION INCENTIVE PROGRAM

6:68-5.2 Eligible projects

(a) (No change.)

(b) All projects shall meet the minimum size criteria in N.J.A.C. 6:68-5.4(f).

(c) The acquisition or substantial renovation of an existing structure may be an eligible project. If eligible, the acquisition or the renovation must be extensive and clearly not routine maintenance and repair. In no case may costs for furnishings and equipment in excess of 30 percent of the total renovation costs of the project be considered eligible for matching.

(d) An application(s) may be submitted combining renovation and construction of an addition. An acquisition or renovation application must result in total floor space which, when added to the floor space of the existing structure, shall meet the minimum size criteria in N.J.A.C. 6:68-5.4(f).

(e) A renovation analysis and program must be prepared by a registered architect and shall be part of the application. The architect shall also certify that the proposed renovated structure and all its component parts shall have a life expectancy of 20 years or more. Studies made by the architect regarding the following shall be submitted in substantiation of the suitability and practicality of the acquisition or renovation:

1. (No change.)

2. The building shall be examined to determine if it is suitable for acquisition or renovation and upon completion will require no more than normal, annual maintenance;

3.-4. (No change.)

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

(h) The signing of construction contracts before full approval by the State Librarian shall make the project ineligible.

6:68-5.3 Eligible project costs

(a) (No change.)

(b) In order to promote the construction of projects in an economical manner, a ceiling periodically shall be set by the State Librarian on maximum per square foot project cost beyond which project costs will not be eligible in the computation of the State share of funding.

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

6:68-5.4 Project criteria

(a) All applicatios will not be eligible in the computation of the State share of funding.

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

6:68-5.4 Project criteria

(a) All applications must meet the requirements and criteria of these regulations. Those interested in applying for possible exceptions must request an interview with the State Librarian. Exceptions to the requirements and criteria may be allowed.

(b) (No change.)

(c) During the calendar year prior to submission of application, the library shall have met the minimum criteria for receipt of State Library Aid (N.J.A.C. 6:68-2) or submit a plan detailing steps to meet all the criteria which is acceptable to the State Librarian.

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

(f) Floor space is meant to include total square footage of space available for public library purposes including outer walls, areas provided for mechanical equipment and maintenance requirements and storage. These areas must have heat, light and ventilation and square footage commensurate with their purposes.

1.-4. (No change.)

(g) Library buildings and facilities shall be designed in accordance with State and Federal minimum standards for providing barrier-free access for physically handicapped people.

1. The applicant shall also comply with N.J.A.C. 5:23-7, Barrier-Free Subcode, pursuant to N.J.S.A. 52:32-4 through 12.

(h)-(j) (No change.)

6:68-5.5 Priorities for the receipt of construction grants

(a) General provisions for priorities for the receipt of construction grants shall include the following:

1. (No change.)

2. Within each of the two priority groupings, all applications shall be ranked in terms of ability to pay by the municipalities and counties. The ratio of the average equalized valuation† of the three years preceding the date of the application to the population estimate of the municipality(ies) or county(ies) by the New Jersey Department of Labor for the year preceding the date of application shall be used as the criterion determining this financial ability. The first grant within each priority grouping shall be awarded that applicant demonstrating the least financial resources through the lowest ratio of equalized valuation to population. Each succeeding grant shall be awarded to the remaining applicant whose ability to pay is lowest.

i. First priority in award of grant shall be given to applications by municipal, joint or county libraries.

ii. Second priority in award of grant shall be given to applications by association libraries.

(b) Any previous recipient of a construction grant shall be placed automatically in the second priority and be ranked last in the priority for two fiscal years succeeding the fiscal year in which the grant was awarded, after which time it shall resume its normal status.

(c) There shall be no grant for a specific building within five fiscal years from the fiscal year in which a library construction grant previously was awarded.

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†Equalized Valuation as listed in the "Certification of Table of Equalized Valuations" promulgated annually on October 1, by the Division of Taxation, New Jersey Department of Treasury.

6:68-5.6 Amount of grant and method of allocation

(a) (No change.)

(b) Should funds be insufficient to allow all projects eligible for a grant to receive at least 25 percent of eligible project costs, funds shall be

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distributed according to priority ranking (see N.J.A.C. 6:68-5.5 until the funds are depleted.

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

6:68-5.7 Review and approval procedures

(a) Application for a grant must be in the completed official form MISC03004069, New Jersey State Department of Education Application.

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

Recodify existing (i) through (o) as (e) through (k). (No change in text.)

SUBCHAPTER 7. INSTITUTIONAL LIBRARY SERVICES

6:68-7.1 Purpose

(a) (No change.)

(b) Three separate institutional funding categories have been developed:

1. Institutional Library Services per capita State aid;

2. Institutional Library Services Developmental Grants; and

3. Institutional Library Services Incentive Grants.

(c) To be eligible for any of the three programs, institutions must establish a library advisory committee to develop and initiate a plan of service. The primary model for institutional library services is that of public library services.

6:68-7.2 Definitions

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

"Access" means the onsite use of the library facility and its resources and services or the ability to use library materials and services from remote locations, also known as satellites. In institutions, access includes open hours of the library facility plus service hours to rooms, cells or wards unduplicated by library facility hours. Access also includes bibliographic access. Limitations on access include permissions required and restrictions imposed on client use of services.

"Client(s) or client groups" means mentally disabled, mentally retarded, and physically handicapped persons; also adults and juveniles in correctional and related programs, and persons in New Jersey veterans' homes. Excluded are persons in general hospitals, general nursing homes and boarding homes.

"Institution" means an adult or juvenile health, mental health, mental retardation, veterans, residential, correctional and other similar facility other than a public school, which is operated by or under contract to the State or to county or municipal governments to carry out health, welfare, educational and correctional programs. Excluded are general hospitals, general nursing homes and boarding homes.

. . .

"Titles" are unique monographs (books) or distinctly titled materials held; this is not the same as volumes or items, which includes all multiple copies of a single title. This definition applies to all materials formats.

6:68-7.3 Minimum standards for institutional library services

(a) The following minimum standards shall apply to institutional library services:

1. Staff shall be assigned by the institution in accordance with the chart set forth below:

Average Daily Client Population	Minimum Number of Paid Staff
Less than 100	One staff member part-time.
100 to 299	Associate librarian part-time. One library clerk, part-time.
300 to 499	Associate librarian full-time. One library clerk, part-time.
500 to 699	One librarian part-time. One library clerk, full-time.
700 to 999	One librarian full-time. Two library clerks, one of whom must be full-time.
1,000 or more	One librarian full-time. Three library clerks, two of whom must be full-time.

2. Materials in all formats to meet the informational, educational, cultural and recreational needs of the population shall be provided as follows:

i. A minimum of five titles per client or 300 titles, whichever is larger. Titles can include print and non-print materials; and

ii. Equipment to support access to and use of library materials.

3.-4. (No change.)

6:68-7.4 Institutional library services per capita State aid

(a) Per capita State aid will provide funds to institutions which meet minimum standards for library services and maintain a level of local library expenditures for library services equal to or above the level in the preceding fiscal year. Such institutions will be eligible, annually, for funding of $1,000 per institution plus a minimum of $7.50 per capita. Fiscal year is determined by the parent organization.

(b) The sum payable as State aid, as finally determined by the Assistant Commissioner and State Librarian, shall be payable on October 1 to each institution qualifying for aid under this chapter.

6:68-7.5 Institutional library services developmental grants

Developmental grants will provide funds to assist institutions in meeting minimum standards for library services.

6:68-7.6 Institutional library services incentive grants

Incentive grants will provide funds to institutions to develop or expand programs of library services. Institutional library services must meet minimum standards prior to an application for this grant.

SUBCHAPTER 8. MUNICIPAL BRANCH LIBRARY SERVICES

6:68-8.1 Purpose

The rules in this subchapter provide for the maintenance, operation and improvement of municipal branch libraries to meet community needs, pursuant to the provisions of the State Library Development Aid Law, (P.L. 1985, c.297, N.J.S.A. 18A:74-3.2 through 3.4).

6:68-8.2 Eligibility

Any municipal public library which receives State aid pursuant to N.J.S.A. 52:27D-178 et seq. and maintains one or more branch libraries is eligible to participate in the program.

6:68-8.3 Categories in award of grants

(a) Each approvable application shall be assigned to one of the two categories as follows:

1. Municipal branch library assistance for planning; or

2. Municipal branch library assistance for operations and improvements.

(b) The priority of categories and the percentage of funds allocated to each category shall be established each year by the State Librarian.

SUBCHAPTER 9. COLLECTION EVALUATION AND DEVELOPMENT

6:68-9.2 Eligible projects

(a) Grants will be made to public libraries to support individual or coordinated collection evaluations and/or user studies.

(b) Grants will be made to public libraries to develop collection subject specialties, either individually or as part of a group of libraries sharing a coordinated collection development plan.

SUBCHAPTER 10. MAINTENANCE OF LIBRARY COLLECTIONS

6:68-10.2 Definitions

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

. . .

"Preservation" means the activities and organization associated with maintaining library and archival materials for use, either in their original physical form or in some other permanent and durable format.

. . .

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6:68-10.3 Eligible projects

(a) Grants will be made to libraries to increase accessibility to historical or special interest collections through projects including identification/inventory, organization and preservation, condition survey, comprehensive preservation program development, emergency planning, disaster recovery, protection, housing, materials conversion, repair, conservation treatment and restoration.

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

6:68-10.4 Funding allocation

(a) No less than 75 percent of program funding will be used for grant awards to publicly supported libraries.

(b) No more than 25 percent of program funding will be used for grant awards to privately supported libraries.

(c) When there are insufficient eligible applications from publicly supported libraries to account for 75 percent of program funding, remaining funds may be used for privately supported libraries.

ENVIRONMENTAL PROTECTION

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System

Adopted Amendments: N.J.A.C. 7:11-2.2, 2.3, 2.4, 2.10 and 2.12

Proposed: December 19, 1994 at 26 N.J.R. 4907(a).

Adopted: May 11, 1995 by Robert C. Shinn, Jr., Chair, New Jersey Water Supply Authority and Commissioner, Department of Environmental Protection.

Filed: May 12, 1995 as R.1995 d.291, **with substantive and technical changes** not requiring additional public comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 52-94-11/502.

Effective Date: June 5, 1995.

Operative Date: July 1, 1995.

Expiration Date: May 3, 1998.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (Authority) is adopting amendments to the Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System. In accordance with N.J.A.C. 7:11-2.12(a)4, Procedures for rate adjustments, the Authority held a pre-public hearing meeting with the Authority's contractual water customers to present and explain the proposed adjustments to the rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water customers, the Secretary of State, the Division of the Ratepayer Advocate and the Board of Public Utilities as required by N.J.A.C. 7:11-2.12(a)4. This meeting was held on January 3, 1995, at the Authority's Clinton, New Jersey Administration Building conference room and was attended by representatives from the Elizabethtown Water Company and the Middlesex Water Company.

Notice of the proposed rate adjustments and public hearing was published in the New Brunswick Home News, Trenton Times, Newark Star Ledger, Hunterdon County Democrat, the Courier-News and the Asbury Park Press newspapers. A news release covering the proposed rate adjustments was also distributed to newspapers of general circulation in the water customers' service area. In addition, a direct mailing of the Notice of Public Hearing was made to all water customers and approximately 185 interested parties on the Authority's mailing list.

A public hearing concerning this rule was held on February 2, 1995, at the Authority's West Trenton, New Jersey, Delaware and Raritan Canal Office Facility to provide interested persons the opportunity to present testimony. Three individuals attended the hearing, two of whom presented comments. Five letters were received during the public comment period, which closed on March 13, 1995. The comments received in the letters and at the public hearing are summarized below.

The following persons made oral comments related to the proposed amendments:

Bruce H. Burcat, Division of the Ratepayer Advocate

James Rothschild, Consultant to Division of the Ratepayer Advocate

The following persons submitted written comments related to the proposed amendments:

Ernest C. Gere, Senior Vice President and Chief Financial Officer, Middlesex Water Company (a privately owned utility member of the Raritan Basin Water Users Association)

L. Mason Neely, Chief Finance Officer, Township of East Brunswick (a publicly owned utility member of the Raritan Basin Water Users Association)

Bruce H. Burcat, Division of the Ratepayer Advocate

James Rothschild, Consultant to the Division of the Ratepayer Advocate

Continuation of Capital Fund Assessment

1. COMMENT: The Consultant to the Division of the Ratepayer Advocate presented a report on behalf of the Ratepayer Advocate which challenged the Authority's rationale for the Capital Fund Component. The report urged the Authority to either eliminate the Capital Fund Assessment which was instituted in FY95 or to not implement the previously scheduled increase from $10.00 to $15.00 per million gallons on July 1, 1995.

RESPONSE: The Capital Fund Component was promulgated last year after much discussion with all interested parties. The Authority created the Capital Fund Component as a reinvestment in the stystem and the benefits of the program accrue to the current users as an assurance of continued interruption free service. While the Authority recognizes that no rate increase is a desirable outcome, the Authority must continue to do what it has done in the past and that is to set the lowest possible rate that in the Authority's opinion adequately protects its facilities. The Capital Fund Component does this by: (1) making up for decades of deferred maintenance; (2) protecting this vital water supply for all users; and (3) eliminating the significant expense of going out for new financing every three to five years. The Authority is proposing a continuation of the program that made sense to all the water supply professionals who reviewed the plan last year.

Sales Bases

2. COMMENT: The Division of Ratepayer Advocate urged the Authority to use a water sales base which contained a "projected sales volume" in order to minimize rates.

RESPONSE: Section 713 of the Authority's bond resolution makes it very clear that the basis for determining what the Authority revenue should be is our actual "Water Purchase Contracts." To do otherwise would subject the Authority's revenue stream to variances in the natural climate and the vagueness of the business climate.

Electricity Costs

3. COMMENT: The need for an increase in the cost of electricity for the pumping of water into storage at Round Valley Reservoir from an actual FY94 expenditure of $95,687 to a projected $171,600 in FY96 was questioned by the water customers and the Division of the Ratepayer Advocate.

RESPONSE: It should be noted that the 1994 actual electrical costs for the South Branch Pumping Station did not include pumping. Pumping was not performed in 1994 because of a piping defect which has since been repaired.

Subsequent to the public hearing, the Authority staff verified the proposed rate increase from the Jersey Central Power and Light Company and reviewed the amount of pumping that will be required in 1996. The staff's updated report confirmed the need for approximately $166,000 for pumping in 1996 in order to ensure the dependability of the pumping station and to maintain the skills of the staff assigned to the station.

Interest Earnings

4. COMMENT: The Water Users Association suggested that the Authority reexamine its assumptions concerning projected interest earnings in light of the steadily increasing interest rates over the past twelve months.

RESPONSE: The Authority has reevaluated its interest income projections. The Interest Income estimate to be received from Reserves in the State of New Jersey Cash Management Pool will be increased from a 4.0 percent to a 5.5 percent rate of return. This change will generate approximately $23,300 in increased revenue to offset FY96 expenses. Also it is presently expected that Long-Term Investments will realize $50,800 in increased revenue as a result of the purchase of a Five Year Federal National Mortgage Association Agency Note (yield to maturity 7.995 percent).

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Use of Capital Fund Balances

5. COMMENT: The contractual water users asked if it would be possible to use part or all of the $3 million dollars in past Capital Project Funds which are currently in the Cash Management Fund.

RESPONSE: At some point in time it may be possible to make use of these funds. The Authority has three serious issues pending with regard to the past Capital Improvement Program.

The first is the final resolution of the flowage easements for the new Raritan River Weir. The Authority will be going through condemnation on a number of easements. While the Authority has money set aside for that, the Authority does not know what the final cost will be and if the funds reserved will be adequate.

Second is the Contractor's claim on the Lumberville Wing Dam project for $900,000. While there has been no action on this claim recently it is prudent to reserve funds against this matter.

The third issue is the Rip Rap on the Round Valley dams. The Authority will soon have a good idea of where this issue stands. Dames and Moore has performed the study and their report is nearly finished. Until the matter is resolved, it is prudent to also reserve funds for this matter.

When and as these items are resolved the disposition of funds reserved will be re-examined.

Water Levels at Spruce Run Reservoir

6. COMMENT: The Hunterdon Sailing Club expressed its appreciation to the Authority for stabilizing water levels at the Spruce Run Reservoir and making their 1994 recreational sailing season successful.

RESPONSE: The Authority acknowledges the commenter's appreciation, but notes that the amount of rainfall controls the amount of water in Spruce Run Reservoir. In dry weather Spruce Run water will be used first to meet the needs of the Authority's customers and levels will fluctuate as in the past. The Spruce Run Reservoir was put in place to meet water supply needs first and then to provide for recreational opportunities that are compatible with the water supply use.

Summary of Hearing Officer's Recommendations and Agency Responses:

Administrator of the Water Supply Element Steven P. Nieswand served as the Hearing Officer at the February 2, 1995 public hearing. After reviewing the testimony presented at the public hearing and through the end of the public comment period as required by N.J.A.C. 7:11-2.12(a)6, Hearing Officer Nieswand made the following recommendations:

1. An amount of $249,600 in additional revenues in the budget year ending June 30, 1995 is available for appropriation into the Rate Stabilization Fund. This amount is recommended for appropriation into the Rate Stabilization Fund to be applied to the FY96 revenue stream for the purpose of offsetting projected FY96 operational expenses.

2. For the reasons discussed in the Summary of Agency-initiated Changes below, the proposed general rate schedule for operations and maintenance of $118.04 per million gallons should be reduced to $100.91 per million gallons at N.J.A.C. 7:11-2.2(b) and 2.10(a)1 and 2, effective July 1, 1995.

3. The sales bases for FY96 shall be as follows:

Operations and Maintenance Component	150.952 MGD
1969 Debt Service Assessment	150.457 MGD
1981 Debt Service Assessment	150.882 MGD
1988 Debt Service Assessment	150.882 MGD

4. The existing Capital Fund Component should be continued as follows:

Effective July 1, 1995	$15.00 per million gallons
Effective July 1, 1996	$20.00 per million gallons
Effective July 1, 1998	$25.00 per million gallons

5. The remaining adjustments to the rate schedule should be adopted as proposed to become effective on July 1, 1995.

The Authority accepts these recommendations, and has modified the rule accordingly upon adoption. The hearing record may be reviewed by contacting Janis E. Hoagland, Esq., Department of Environmental Protection, CN 402, Trenton, NJ 08625.

Summary of Agency-Initiated Changes

Due to a projected reduction of $299,400 in the originally proposed insurance budget for FY96 and the availability of unanticipated revenues collected during FY94, the projected operations and maintenance component of the rate schedule is changed in this adoption from $118.04 as the charge per million gallons set forth in the proposed rule to $100.91 per million gallons, a reduction of $17.13 per million gallons. This reduced rate is reflected at N.J.A.C. 7:11-2.2(b), which sets forth the operations and maintenance rate itself, and at N.J.A.C. 7:11-2.10(a)1 and 2, which reference N.J.A.C. 7:11-2.2 and set forth the operations and maintenance charge for standby service users.

Executive Order No. 27 Statement

Executive Order No. 27(1994) requires administrative agencies which adopt, readopt, or amend any rule or regulation to which that Order applies to provide a comparison with Federal law, and to provide further discussion and analysis (including a cost-benefit analysis) if the standards or requirements by the agency exceed standards or requirements imposed by Federal law.

These rules are promulgated under the procedures of the New Jersey Water Supply Authority. The New Jersey Water Supply Authority is an instrumentality of the State of New Jersey in but not of the Department of Environmental Protection. The New Jersey Water Supply Authority is charged with the operation and management of the State owned raw water supply facilities within the State of New Jersey.

These amendments are not adopted under the authority of or in order to implement, comply with or participate in any program established under Federal law. In addition, this rule adoption is not under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

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

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including, but not limited to, all of the following:

1.-7. (No change.)

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of 150.952 million gallons per day has been used in setting the rate listed at (b) below.

(b) General Rate Schedule for Operations and Maintenance:

Allocation Million Gallons per Day (MGD)	Rate/Million Gallons *[$118.04]* ***$100.91***

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The Debt Service Assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of 150.457 million gallons per day. This Debt Service Assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation Million Gallons per Day (MGD)	Rate/Million Gallons
7/1/95 to 6/30/2002		$14.01

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following Debt Service Assessment rate, based on a sales base of 150.882 million gallons per day, in addition to that included in (b) above, will be applied to all customers.

Period	Allocation Million Gallons per Day (MGD)	Rate/Million Gallons
7/1/95 to 10/30/2006		$33.48

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of 150.882 million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

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Period	Allocation	Rate/Million Gallons
7/1/95 to 6/30/97	Million Gallons per Day (MGD)	$57.38
7/1/97 to 6/30/99	Million Gallons per Day (MGD)	$57.20

7:11-2.4 Capital Fund Component

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

(c) Capital Fund Assessment

Period	Allocation	Rate/Million Gallons
7/1/95 to 6/30/96	Million Gallons per Day (MGD)	$15.00
7/1/96 to 6/30/98	Million Gallons per Day (MGD)	$20.00
7/1/98 to 6/30/99	Million Gallons per Day (MGD)	$25.00

7:11-2.10 Standby charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.9 above, shall pay a monthly minimum charge based on the capacity of the user's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge, based on charges as set forth under N.J.A.C. 7:11-2.2, 2.3 and 2.4.

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof	*[$118.04]* ***$100.91*** plus annual debt service assessment rates for 1981 Water Supply Bonds, 1988 Water System Revenue Bonds and Capital Fund Component.

2. For Standby Contracts within the Raritan River Basin:

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof	*[$118.04]* ***$100.91*** plus annual debt service assessment rate for 1969 Water Conservation Bonds, 1981 Water Supply Bonds, 1988 Water System Revenue Bonds and Capital Fund Component.

7:11-2.12 Procedures for rate adjustments

(a) Prior to adopting an adjustment in the Schedule or the Sales Bases established in this subchapter, the Authority shall comply with the following ratemaking procedures and schedule:

1. Official Notice: Official notice and an explanation outlining the need for the proposed adjustment to the Schedule or the Sales Bases shall be given to all contractual water customers; the Department the Treasury, *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate; and other interested parties at least six months prior to the proposed effective date.

2. Supporting documents and financial records: All appropriate supporting documents and financial records of the Authority in support of the proposed adjustment shall either be supplied to all contractual water customers; the Department the Treasury, *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate; and other interested parties upon request, or shall be made available for review at the Authority's offices in Clinton, New Jersey at the time official notice of the proposed rate adjustment is given. This information shall be deemed to be part of the record of the proceedings for purposes of preparing the hearing officer's report required under (a)7 below.

3. Requests for additional information: The contractual water customers and the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate shall be afforded the opportunity to submit written questions and requests for additional data prior to the time of the meeting required under (a)4 below. The Authority staff shall provide written answers to the questions and supply the additional data requested prior to the meeting.

4. Meeting with contractual customers and *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate: After sending official notice to the contractual water customers and the Department of the Treasury, *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate, regarding the proposed rate adjustment, Authority staff shall schedule a meeting to occur within 45 days with representatives from the contractual water customers and the *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate in order to present and explain the proposal.

i. At that time, contractual water customers and the *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate, will be invited to submit written questions which shall be put into the hearing record and which will be answered by Authority staff at the public hearing.

ii. (No change.)

5. Public hearing: After meeting with the contractual customers and after giving sufficient opportunity for submission of written questions on the proposed rate adjustment, a public hearing shall be held, at which one or more members of the Authority shall serve as hearing officer(s). The public hearing agenda shall include, but not be limited to, the following:

i. (No change.)

ii. Staff answers to the questions raised prior to the hearing by the contractual water customers and *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate;

iii. Oral statements, written statements and any supporting evidence are to be presented and entered into the record by all interested parties including the contractual water customers, the *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate, intervenors who are judged by the hearing officer(s) to meet the criteria established in (a)5iv below, and any other party of interest;

iv. (No change.)

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

(3) The Department of the Treasury, *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate, shall be deemed a qualified intervenor for purposes of the public hearing.

v. (No change.)

vi. Responses from staff.

(1) In the event that a response cannot be immediately given at the hearing, then a written response shall be prepared within 10 working days after the public hearing, and a copy of that written response shall be provided to all contractual water customers, the *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate, and attendees at the hearing and made a part of the hearing record.

(2) Within 10 working days after receipt of the answer, contractual water customers, the *[Office]* ***Division*** of *[Rate Payer]* ***Ratepayer*** Advocate, and attendees will be permitted to respond in writing to the answers of the staff for the record.

6.-7. (No change.)

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System Adopted Amendments: N.J.A.C. 7:11-4.3, 4.4, 4.9 and 4.13

Proposed: December 19, 1994 at 26 N.J.R. 4910(a).

Adopted: May 11, 1995 by Robert C. Shinn, Jr., Chair, New Jersey Water Supply Authority and Commissioner, Department of Environmental Protection.

Filed: May 12, 1995 as R.1995 d.292, **with substantive and technical changes** not requiring additional public comment (see N.J.A.C. 1:30-4.3).

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Authority: N.J.S.A. 58:1B-7.
DEP Docket Number: 51-94-11/501.
Effective Date: June 5, 1995.
Operative Date: July 1, 1995.
Expiration Date: May 3, 1998.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (Authority) is adopting amendments to the Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System. In accordance with N.J.A.C. 7:11-4.13(a)4, the Authority held a pre-public hearing meeting with the Authority's contractual water purchasers and interested parties to present and explain the proposed adjustment to the rate schedule embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water purchasers, the Secretary of State and interested parties including the Division of the Ratepayer Advocate and the Board of Public Utilities.This meeting was held on January 11, 1995, at the Authority's Manasquan Reservoir System Administration Building, Wall Township, New Jersey, and was attended by two persons representing contractual water users.

Notice of the proposed rate adjustments and public hearing was published in the Trenton Times, Newark Star Ledger, Asbury Park Press, the Greater Media Newspapers and the Herald. A news release covering the proposed rate adjustments was also distributed to newspapers of general circulation in the water customers' service area. In addition, a direct mailing of the Notice of Public Hearing was made to all water customers and approximately 165 interested parties on the Authority's mailing list.

The public hearing concerning this rule was held on February 8, 1995, at the Authority's Manasquan Reservoir System Administration Building, Wall Township, New Jersey, to provide interested persons the opportunity to present testimony. Three individuals attended the hearing including a representative from the New Jersey-American Water Company and two representatives from the Borough of South Belmar. One person presented comments. Two letters were received from the New Jersey-American Water Company and one letter was received from the Division of the Ratepayer Advocate during the public comment period, which closed on March 17, 1995. The written statement from the New Jersey-American Water Company was read into the record at the February 8, 1995 public hearing. A letter facsimile with written comments submitted by the Division of the Ratepayer Advocate was also read into the record during the public hearing. The comments received at the public hearing are summarized below:

The following person made oral comments related to the proposed amendments:

Robert A. Engle, Revenue Requirement Specialist, New Jersey-American Water Company

The following persons submitted written comments related to the proposed amendments:

Robert A. Engle, Revenue Requirement Specialist, New Jersey-American Water Company

Andrew K. Dembia, Division of the Ratepayer Advocate

Debt Service Coverage Requirements

1. COMMENT: The Division of the Ratepayer Advocate considered the Manasquan System's 120 percent debt service coverage requirement to be excessive.

RESPONSE: It is within the norm of industry standards for a publicly-owned utility system which is secured solely by the revenues of that system to have a debt service requirement of 120 percent. The Authority's Raritan Basin System also has a similar 120 percent debt service coverage requirement.

Use of Renewal and Reserve Funds

2. COMMENT: The Division of the Ratepayer Advocate urged that Renewal and Reserve funds be used in lieu of contributions to the Depreciation Reserve Fund and the Capital Equipment Budget.

RESPONSE: The Authority must first establish an appropriate cap for the Renewal and Reserve Fund. The Authority staff will investigate this matter further and submit their recommendations for consideration by the Board. If the Board of Commissioners approves, future rate adjustments will incorporate the use of Renewal and Reserve funds to help offset specific operational expenses.

Projected Interest Earnings

3. COMMENT: The Division of the Ratepayer Advocate urged that the Authority reconsider its projected interest earnings for FY96.

RESPONSE: The Authority Staff has increased the projected interest income from reserves in the State of New Jersey Cash Management Pool from a 4.0 percent to a 5.5 percent rate of return.

Refinancing of System Bonds

4. COMMENT: The Division of the Ratepayer Advocate recommended that the Authority consider the feasibility of refinancing the Notes and the Interim Advance Notes to achieve less restrictive bond covenants.

RESPONSE: The only means of refinancing the Notes to lessen the requirements of the Bond Resolution would be with the full support of the Department of Treasury, which is the sole holder of the Notes. The Authority has approached the State on several occasions in the past seeking a reduction in interest rates on the Notes. On each occasion this effort has been unsuccessful. This is a good indication that it is highly unlikely the State would diminish the value of its interest in the Notes by easing the terms of the Bond Resolution.

Merit Increases In Employee Salaries

5. COMMENT: The New Jersey American Water Company questioned the 4.5 percent merit increases in certain Authority employee salaries budgeted for FY96.

RESPONSE: The Authority has conservatively assumed that unionized employees may receive a modest cost of living increase during FY96 based on new labor agreements currently under negotiation. Union employees have also historically received an additional four and a half percent (4.5 percent) merit increase on their anniversary dates if they have not already reached the top of their salary range. The Authority's employees belong to the same negotiating units as do the State employees. Any negotiated labor contracts which may provide for the continuation of merit increases in addition to cost of living adjustments must be honored by the Authority.

In Lieu of Tax Payments

6. COMMENT: The New Jersey American Water Company expressed a concern about the potential impact of proposed legislation dealing with in lieu of tax payments.

RESPONSE: The FY96 budget provides $46,500 for in lieu of tax payments required pursuant to existing legislation (that is, N.J.S.A. 58:21B-6). The Authority has not included any additional funds in the FY96 budget for additional in lieu of tax payments which could result from a change in the State Laws.

There are currently four bills that are concerned with "in lieu of tax payments." These bills are:

a. **Senate, No. 1425**—"An act concerning the issuance of in lieu of tax payments by the New Jersey Water Supply Authority, providing the terms thereof, and amending P.L. 1981, c.293."

b. **Senate, No. 393**—"An act providing for payments in lieu of taxes on certain property acquired by State authorities and supplementing Title 54 of the Revised Statutes."

c. **Senate, No. 394**—"An act concerning payments in lieu of taxes by certain State authorities and supplementing Title 54 of the Revised Statutes."

d. **Assembly, No. 801**—"An act concerning the issuance of in lieu of tax payments by the New Jersey Water Supply Authority, providing the terms thereof, and amending P.L. 1981, c.293."

The Authority has and will continue to keep contractual water customers in both the Manasquan River System and the Raritan River System aware of any developments concerning proposed changes to the existing in lieu of tax statute because of the potentially significant impact of any changes in the statutory requirements.

Addition of Services into Special and Professional Services Account

7. COMMENT: The New Jersey-American Water company questioned the need for additional services in the account for Special and Professional Services.

RESPONSE: The Special and Professional Services account proposed for Fiscal Year 1996 Budget reflects some additional items as well as adjustments to several line items. The adjustments to certain line items are a result of

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current projected costs based on the past experience of operating the system. Consultant Services were adjusted to also reflect current costs.

Laboratory Services for Water Quality Sampling has been increased to reflect increased testing and sampling of the Manasquan River Watershed area. Beyond the sampling that has been part of ongoing activities such as Manasquan Reservoir water and well and Manasquan River water and river bed sampling and testing, the Authority will again sample and test water from a network of groundwater wells located throughout the river watershed area that were established as part of the feasibility and design process for the reservoir project. These results are important to show any changes occurring in the surfacial aquifers within the Manasquan River Basin. The Authority is interested in these results because we remain committed to protection of this vital surface water supply source.

Financial Advisory Services have been incurred within several previous fiscal years as unbudgeted expenditures, but now have been budgeted since the financial advice and guidance is expected to be a recurring annual cost. Engineering services pertain to services provided by the Authority's engineering staff. The Authority's engineering staff has been required in the past to assist with permits or other technical data on specific projects for the Manasquan Reservoir System.

Addition of Advertising and Promotional Account

8. COMMENT: The New Jersey-American Water Company questioned the need for addition of the new advertising and promotional account.

RESPONSE: These charges were previously allocated to the General and Administrative account. The Authority has determined through the operating experience gained over the years that the charges to this account can be identified to each system. This account provides funds for the publication of Public Notices of hearings, Bid Notices, etc. directly related to the operation of the Manasquan Reservoir System.

Addition of Maintenance Supplies Account

9. COMMENT: The New Jersey-American Water Company questioned the need for the new Maintenance Supplies Account.

RESPONSE: The Authority's Capital Equipment asset threshold value was raised from $300.00 to $1,000 by Resolution No. 861 passed by the Authority Commissioners on July 12, 1993. This change required the creation of the new account to cover the costs of equipment below the $1,000 in the direct operating expenses budget. The Fiscal Year 1996 budget includes $1,200 for this purpose which represents the replacement of an aluminum jon boat which is used for water supply operations maintenance and a lubricating oil pump. This new account will provide funds for the purchase of new and replacement capital equipment which no longer falls in the category of Fixed Asset.

Jersey Central Power & Light Rebate

10. COMMENT: The New Jersey-American Water Company questioned why the JCP&L rebate was being eliminated.

RESPONSE: The JCP&L rebate has not been eliminated from the budget and the Authority does still participate in the voluntary curtailment program. The Authority does not project the value of the rebate for development of its budgets. The rebate money is used to directly offset electrical costs incurred in the current year's direct operating expenses budget.

Replacement of Authority Utility Body Truck in FY96

11. COMMENT: The New Jersey-American Water Company questioned why the Utility Body Truck purchased in 1993 was scheduled for replacement in FY96.

RESPONSE: The Utility Body Truck shown for replacement in Fiscal Year 1996 was purchased in 1993 as a used vehicle from the Raritan Basin System. The vehicle was already five years old but in good operating condition. The vehicle was added to the Manasquan fleet to enable the facilities maintenance work unit to accomplish multiple work tasks at various locations.

Summary of Hearing Officer's Recommendations and Agency Response:

Authority Board Member Louis C. Mai served as Hearing Officer at the February 8, 1995, public hearing. After reviewing the testimony presented at the public hearing and through the end of the public comment period as required by N.J.A.C. 7:11-4.13(a)8, Hearing Officer Mai made the following recommendations:

1. For the reasons discussed in the Summary of Agency-Initiated Changes below, the proposed Operations and Maintenance Expense Component of $379.89 per million gallons should be changed to $356.38 per million gallons, effective July 1, 1995, and the proposed Operations and Maintenance Component of the standby charge at N.J.A.C. 7:11-4.9 should similarly be changed from $379.89 to $356.38, effective July 1, 1995.

2. For the reasons discussed in the Summary of Agency-Initiated Changes below, the original proposed Debt Servcie Component of $761.86 per million gallons should be changed to $749.09 per million gallons effective July 1, 1995.

The Authority accepts these recommendations, and has modified the rule accordingly upon adoption. The hearing record may be reviewed by contacting Janis E. Hoagland, Esq., Department of Environmental Protection, CN 402, Trenton, NJ 08625.

Summary of Agency-Initiated Changes:

Due to a reduction of $42,600 in the projected insurance expenses for FY96, the projected operations and maintenance component of the rate schedule is changed in this adoption from $379.89 as the charge per million gallons set forth in the proposed rule to $356.38 per million gallons, a reduction of $23.51 per million gallons. This reduced rate is reflected at N.J.A.C. 7:11-4.3(c) which sets forth the operations and maintenance rate itself, and at N.J.A.C. 7:11-9 which references N.J.A.C. 7:11-4.3 and sets forth the operations and maintenance charge for standby services.

Due to greater than originally projected interest earnings, the projected interest income on the Debt Service Reserve Funds has been increased from $75,000 to $150,000 per year. Accordingly, the projected Debt Service component of the rate schedule is changed in this adoption from $761.86 as the charge per million gallons set forth in the proposed rule to $749.09 per million gallons, a reduction of $12.77 per million gallons.

Executive Order No. 27 Statement

Executive Order No. 27(1994) requires administrative agencies which adopt, readopt, or amend any rule or regulation to which that Order applies to provide a comparison with Federal law, and to provide further discussion and analysis (including a cost-benefit analysis) if the standards or requirements by the agency exceed standards or requirements imposed by Federal law.

These rules are promulgated under the procedures of the New Jersey Water Supply Authority. The New Jersey Water Supply Authority is an instrumentality of the State of New Jersey in but not of the Department of Environmental Protection. The New Jersey Water Supply Authority is charged with the operation and management of the State owned raw water supply facilities within the State of New Jersey.

This rule adoption is not proposed under the authority of or in order to implement, comply with or participate in any program established under Federal law. In addition, this rule adoption is not under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

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

7:11-4.3 Operations and maintenance expense component

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

(c) Operations and maintenance expense component:

Effective Date	Rate/Million Gallons (based upon a 16.097 mg per day sales base)
July 1, 1995	*[$379.89]****$356.38***

7:11-4.4 Debt service cost component

(a) (No change.)

(b) The following Debt Service rates, based on a sales base of 16.097 million gallons per day, apply to all water purchasers who entered into a water purchase contract before July 1, 1990, the date upon which the Authority commenced operation of the Manasquan Reservoir System (Initial Water Purchase Contract) and began to make uninterruptible service available to the purchasers ("System Operation Date").

Period	Rate/Million Gallons
7/1/95 to 6/30/96 (Coverage 120 percent)	*[$761.86]****$749.09***

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

7:11-4.9 Standby charge

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of the purchaser's withdrawal

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system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700 GPM) or fraction thereof	*[$379.89]* ***$356.38*** plus annual debt service assessment rate established in N.J.A.C. 7:11-4.4

7:11-4.13 Procedures for rate adjustments

(a) Prior to amending the schedule of rates, charges and debt service assessments established by this subchapter, the Authority shall:

1. Provide notice and an explanation outlining the need for the proposed rate adjustment to all purchasers; the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate; the Board of Public Utilities and other interested persons at least six months prior to the proposed effective date. This notice and explanation shall be deemed to be part of the record of the proceedings.

2. Provide supporting documents and financial records of the Authority, at the Authority's cost, in support of the proposed adjustment to all purchasers; the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate; the Board of Public Utilities and other interested persons upon request, and make such documents and records available for review at the Authority's offices in Clinton, New Jersey at the time notice of the proposed amendment to the rates is given. These supporting documents and financial records shall be deemed to be part of the record of the proceedings for purposes of preparing the hearing officer's report required under (a)9 below;

3. Afford purchasers, the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate and the Board of Public Utilities and other interested persons the opportunity to submit written questions and requests for additional data prior to the time of the meeting required under (a)4 below. The Authority staff shall provide written answers to the questions and supply the additional data requested prior to the meeting;

4. Schedule a meeting with the purchasers, the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate and the Board of Public Utilities and other interested persons within 45 days after sending them notice of the proposed amendments to the rate schedule regarding the proposed amendments:

i. At the meeting the purchasers, the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate, and the Board of Public Utilities and other interested persons will be invited to submit written questions which will be put into the hearing record and which will be answered by Authority at the public hearing;

ii. (No change.)

5. Hold a public hearing on the proposed rate adjustment. One or more members of the Authority will serve as the hearing officer. The public hearing agenda shall include, but not be limited to:

i. (No change.)

ii. The Authority's answers to the questions raised prior to the hearing by the purchasers, the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate, the Board of Public Utilities and other interested persons;

iii. (No change.)

iv. Questions of the Authority by the purchasers, the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate, the Board of Public Utilities and any interested persons on any aspect of the need for, the basis of, or any provision of the proposed rate adjustment. Follow up questions relative to the answers of the Authority may also be directed to the Authority during the public hearing;

6. Attempt to answer all questions raised at the public hearing. In the event that a response cannot be immediately given at the public hearing, then a written response shall be prepared within 10 working days after the public hearing, and a copy of that written response will be provided to all contractual water purchasers, the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate, Board of Public Utilities and attendees at the hearing and made a part of the hearing record;

7. Permit, within 10 working days after receipt of the answer, contractual water purchaser, the Department of the Treasury, *[Office]* ***Division*** of the *[Rate Payer]* ***Ratepayer*** Advocate, the Board of Public Utilities and attendees will be permitted to respond in writing to the answers of the staff for the record;

8.-9. (No change.)

(b) (No change.)

(a)

DAM SAFETY

Dam Safety Standards
Readoption with Amendments: N.J.A.C. 7:20

Proposed: March 6, 1995 at 27 N.J.R. 795(a).

Adopted: April 22, 1995 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: April 28, 1995 as R.1995 d.266, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-43).

Authority: N.J.S.A. 58:4-1 et seq. and 13:1D-1 et seq.

DEP Docket Number: 02-95-02/318.

Effective Date: April 28, 1995, Readoption;
June 5, 1995, Amendments.

Expiration Date: April 28, 2000.

The Department of Environmental Protection (Department) is readopting the rules at N.J.A.C. 7:20 with amendments to ensure the protection of areas below dams from the consequences of their failure. Dams and their appurtenant structures are required to be inspected on a regular basis in order to determine if repairs or modifications are necessary to protect life and property.

Summary of Public Comments and Agency Responses:

Nancy Wittenberg of the New Jersey Builders Association (NJBA) and J.J. Geuther of Jersey Central Power and Light (JCP&L) submitted written comments on the proposed readoption within the comment period which closed April 5, 1995.

The following is a summary of the comments timely submitted on the proposed readoption and the Department's responses.

1. COMMENT: The NJBA commented that impoundments which are constructed either completely below grade or in such a manner that the outlet structure and associated berm and discharge pipe are constructed entirely below existing grade should be excluded from the definition of dam and the requirements of this rule.

RESPONSE: It is not the intent of the Department to regulate excavated basins where berms are not constructed. The definition of "dam" clearly states a berm more than five feet classifies as a dam. Therefore, the Department does not feel it is necessary to change the definition of "dam."

2. COMMENT: The NJBA commented that the proposed additional drawdown requirement at N.J.A.C. 7:20-1.9(i)4 should have a specific exception for excavated impoundments and detention basins. In addition, JCP&L suggested the insertion of additional text to N.J.A.C. 7:20-1.9(i)4 to indicate that the drawdown rate should not apply to dams that are designed to be stable under drawdown rates greater than one foot per day.

RESPONSE: The drawdown requirements at N.J.A.C. 7:20-1.9(i) are intended for structures with permanent impoundments. This rule will not apply to detention basins or excavated basins with no permanent impoundment or dams whose purposes require faster drawdown times and are designed in such a manner as to allow drawdown at a greater rate. N.J.A.C. 7:20-1.9(i)4 has been modified to make clear the applicability of the drawdown requirements.

3. COMMENT: The NJBA supports the deletion of the requirement that retention and detention basins for stormwater management meet the requirements of the State Stormwater Management Regulations since this change eliminates a duplicative regulation.

RESPONSE: The Department acknowledges this comment.

4. COMMENT: JCP&L questioned whether the Department intends that Emergency Action Plans include the drawdown rate limitation imposed in N.J.A.C. 7:20-1.9(i)4 for dams that have more rapid drawdown capability since emergency conditions would warrant the most rapid drawdown possible.

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RESPONSE: The Department will not require that Emergency Action Plans incorporate the drawdown rate in N.J.A.C. 7:20-1.9(i). The dam owner and emergency management officials must evaluate and implement the proper drawdown that is most beneficial to public safety at the time of the emergency.

5. COMMENT: The NJBA commented that the Dam Safety Standards should include a means of incorporating other land use regulation permits which are required for a project into the permit issued for dam construction.

RESPONSE: The Department understands the commenter's concern that the Department should streamline reviews of a project; however, under the Safe Dam Act the Department cannot regulate through the Dam Safety Standards all of the environmental aspects of a project that are required to be regulated under other programs such as stream encroachment and freshwater wetlands. The regulatory groups within the Department do work together to coordinate as much as possible the various permit reviews necessary for each project.

Executive Order No. 27 Statement

This readoption with amendments is not adopted under the authority of or in order to implement, comply with or participate in any program established under Federal law. The readoption with amendments also is not adopted under the authority of a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:20.

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]*):

7:20-1.2 Definitions

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

. . .

"Auxiliary spillway" means the second used spillway during flood flows which is not the emergency spillway.

. . .

"Division" means the Division of Engineering and Construction in the Department of Environmental Protection.

. . .

"Principal spillway" means the primary or first used spillway during normal inflow and flood flows.

. . .

7:20-1.3 Permit-by-rule

(a) All dams must be designed, constructed, operated, maintained or removed in compliance with the rules in this subchapter except as set forth below:

1. Owners and operators of Class IV dams (see N.J.A.C. 7:20-1.8, Dam classification) are not required to file documents with nor obtain a permit from the Department, but must meet the following requirements, in addition to those set forth elsewhere in this subchapter:

i. (No change.)

ii. All necessary local approvals must be obtained; and

iii. A New Jersey licensed professional engineer must design the Class IV Dam to meet all technical requirements of this subchapter.

7:20-1.4 General requirements and prohibitions

(a) No person may construct or operate a new dam or modify or repair an existing dam without first having obtained a permit from the Department, unless subject to the permit-by-rule provision in N.J.A.C. 7:20-1.3. Where emergency circumstances justify, repairs of a dam may be undertaken prior to obtaining a permit, in accordance with (i) below.

(b)-(g) (No change.)

Recodify existing (i)-(m) as (h)-(l). (No change in text.)

(l) Utilities crossing within dam embankments are prohibited unless demonstrated to the satisfaction of the Department that such utilities will not jeopardize the safety of the dam.

(m) (No change in text.)

(n) Unless otherwise approved by the Department, no trees shall be permitted to grow on the dam embankment.

7:20-1.7 Application stage

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

(f) All applicants must submit an Operation and Maintenance Manual in accordance with N.J.A.C. 7:20-1.11 and applicants for Class I and II dams (see N.J.A.C. 7:20-1.8) shall prepare and submit an Emergency Action Plan which shall at least include a Dam Breach Analysis, Inundation Maps and Emergency Notification and Evacuation Plans.

(g) (No change.)

(h) The application to remove or breach a dam shall include the following:

1. (No change.)

2. Plans and computations for stabilization of the lake bed including the channel upstream of the breach, and for the control of sediment within the lake downstream of the breach during and after the breach has been effected;

3. (No change.)

4. Computations detailing the effects of the breach on the downstream channel and demonstrating that the project will not adversely affect flooding conditions downstream during the 10, 50 and 100 year storms;

5.-6. (No change.)

7. Evidence that all adjoining property owners of the impoundment and the municipality where the reservoir or dam is located have received notification that an application has been submitted to the Department to remove or breach a dam and proof of publication of notice of the proposed removal application in at least one newspaper of general circulation in the municipality where the reservoir or dam is located;

8.-9. (No change.)

7:20-1.9 Design criteria

(a) (No change.)

(b) For existing dams, it is recognized that the relationships between valley slope and width, total reservoir storage, drainage area, and other hydrologic factors have a critical bearing on determining the safe spillway design flood. When appropriate, based on the design of the dam, rationale selection of a safe, reduced spillway design for specific site conditions based on quantitative and relative impact analysis is acceptable. The spillway should be sized so that the increased downstream damage resulting from overtopping failure of a dam would not be significant as compared with the damage caused by the flood in the absence of a dam overtopping failure. The minimum design storm for the dam shall be the 100 year storm.

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

(h) Should a vegetated or unlined auxiliary spillway, approved by the Department, be installed, it must be able to pass the design storm without jeopardizing the safety of the structure and that has a predicted average frequency of use less than:

1.-3. (No change.)

(i) Drawdown requirements are as follows:

1.-3. (No change.)

4. Dams ***which impound water on a permanent basis*** shall include a means to allow the reduction of the reservoir water surface elevation five feet in 10 days at a rate not to exceed one foot per day. ***This requirement shall not apply to dams whose intended purpose requires and whose design allows faster drawdown times.*** For existing dams which satisfactorily meet Department safety and operating criteria, the applicant may, with prior approval of the Department, present alternative reservoir drawdown plans.

(j)-(o) (No change.)

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(a)

DIVISION OF FISH, GAME AND WILDLIFE

Notice of Administrative Correction
Marine Fisheries
Lobster and Fish Pots; Escape Vents
N.J.A.C. 7:25-18.5

Take notice that the Department of Environmental Protection has discovered an error in the text of notice of administrative correction published in the May 1, 1995 New Jersey Register at 27 N.J.R. 1794(a). Due to an error in the processing of the notice for publication, both the narrative text and the rule text for N.J.A.C. 7:25-18.5(g)11v(2) set forth the metric equivalent of 2.375 inches as "0.63 mm," rather than the correct "60.3 mm." This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

7:25-18.5 General net regulations

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

(g) Individuals intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the Commissioner for a license and/or permit. To be eligible to purchase a 1992 license for a drifting, staked or anchored gill net the applicant shall have purchased a gill net license during 1990 or 1991 or a 1992 license prior to May 1, 1992 or provide documented proof of active military service within one year of application. An applicant who does not meet the above requirements must file an application, in person, with the Department in each of two consecutive years. Such an applicant shall be eligible for gill net licenses in the following calendar year. Beginning in the license year (January 1-December 31) 1993, an applicant for a gill net license must have possessed a gill net license in one of the two previous years. Failure to purchase a gill net license in one of the prior two years shall subject the applicant to the two year waiting period described above. Availability of Delaware Bay Gill Net Permits shall be determined pursuant to N.J.A.C. 7:25-18.6 through 18.11. Upon receipt of the application, and the prescribed license fee, the Commissioner may, in his or her discretion, issue single season licenses and/or permits as specified for each net type for the taking of fish with nets only as follows:

1.-10. (No change.)

11. Lobster or fish pots may be used for the taking of all species except those specifically protected and shall be used only in the Atlantic Ocean, Delaware Bay, Raritan Bay, and Sandy Hook Bay except as provided in (g)11vii below.

i.-iv. (No change.)

v. Effective March 20, 1995, all lobster and fish pots set north of Barnegat Inlet (LORAN C 9960-Y-43300) must be constructed to include one of the following escape vents in the parlor section of the pot located in such a manner that it would not be blocked or obstructed in normal use by any portion of the pot, associated gear, or the sea floor;

(1) (No change.)

(2) Two circular portals with unobstructed openings not less than 2.375 inches [(0.63 mm)] **60.3 mm** in diameter.

vi.-x. (No change.)

12. (No change.)

(h) (No change.)

(b)

OFFICE OF ENFORCEMENT COORDINATION

Notice of Administrative Corrections
Air Administrative Procedures and Penalties
Civil Administrative Penalties
N.J.A.C. 7:27A-3.10

Take notice that the Department of Environmental Protection has discovered that, as a result of the recent amendments to N.J.A.C. 7:27A-3.10 (see 26 N.J.R. 4030(a) and 27 N.J.R. 93(a)) which significantly revised the subcodification of N.J.A.C. 7:27A-3.10, a reference in subsection (a) to subsection (g) needs to be revised to refer instead to subsection (l) and (m), and a reference in subsection (n) to paragraph "(g)5 below" needs to be changed to "(l)5 above." This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) The Department may assess a civil administrative penalty of not more than $10,000 for the first offense, not more than $25,000 for the second offense, and not more than $50,000 for the third and each subsequent offense for each violation of the Act or of any rule promulgated pursuant to the Act listed in [(g)] **(l) and (m)** below.

(b)-(m) (No change.)

(n) For any violation of N.J.A.C. 7:27-5.2 where the emission of air contaminants is in such quantities and duration as are, or tend to be, injurious to human health or welfare, animal or plant life or property, the assessed penalty shall in no case be reduced by more than 95 percent of the maximum civil administrative penalty pursuant to [(g)5 below] **(l)5 above**, or shall in no case exceed the maximum civil administrative penalty set forth at N.J.S.A. 26:2C-19(b).

(o) (No change.)

(c)

PINELANDS COMMISSION

Notice of Administrative Correction
Pinelands Comprehensive Management Plan
Management Programs and Minimum Standards
Pinelands Septic Dilution Model
N.J.A.C. 7:50-6 Appendix A

Take notice that the Pinelands Commission has discovered an error in the text of the formula set forth in N.J.A.C. 7:50-6 Appendix A. Certain formula symbolism as proposed and adopted (see 26 N.J.R. 165(a) and 4795(a)) was omitted when the Appendix was incorporated into the Administrative Code through the 12-19-94 Code update. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected appendix follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

APPENDIX A

PINELANDS SEPTIC DILUTION MODEL
December 1993

The water quality standards of the Pinelands Comprehensive Management Plan allow the use of individual on-site septic systems provided that the design of the system and the size of the parcel on which the system is located will ensure that the concentration of nitrate-nitrogen in the groundwater exiting the parcel or entering a surface water body will not exceed 2 ppm (N.J.A.C. 7:50-6.84(a)4iii). The model used to calculate the minimum land area necessary to dilute nitrogen from septic systems to concentrations that will comply with the water quality standards was developed by K.W. Brown (An Assessment of the Impact of Septic Leach Fields, Home Lawn Fertilization and Agricultural Activities on Groundwater Quality, 1980). The following formula is used:

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$$\left[At = Af + \frac{FLf}{\frac{C - Df\,Af}{Do}} \right]$$

$$At = Af + \frac{\left(\frac{Flf}{C} - Df\right)Af}{Do}$$

. . .

HEALTH

(a)

PARENTAL AND CHILD HEALTH SERVICES

Newborn Screening Program

Newborn Hearing Screening and Newborn Biochemical Screening

Readoption: N.J.A.C. 8:19

Proposed: March 6, 1995 at N.J.R. 807(a).

Adopted: May 3, 1995 by Len Fishman, Commissioner, Department of Health.

Filed: May 8, 1995 as R.1995 d.274, **without change.**

Authority: N.J.S.A. 26:2-101 et seq. and 26:2-110 and 111.

Effective Date: May 8, 1995.

Expiration Date: May 8, 2000.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Health is readopting N.J.A.C. 8:19 without change. The comment period closed on April 5, 1995. A total of 35 individuals, representing 32 agencies/practices, provided written comments. The following is a list of the persons, with their affiliations, who provided comments:

Rosa A. Abreu, MA, Manager, CCC-A, Speech and Hearing Center, Newark Beth Israel Medical Center

Beryl Chassin, MA, CCC-A, Audiologist, Monmouth Medical Center

Donna Tkacs, MS, CCC-A, Audiologist, Monmouth Medical Center

Gregory D. Delfino, MA, CCC-A, Acting Director of Hearing & Speech Center, United Hospitals Medical Center, Hearing & Speech Center

Joni DelSordo, MA, CCC-A, Audiology Supervisor, Jersey Shore Medical Center

Carol M. Grinaldi, State Coordinator, Self Help for Hard of Hearing People, New Jersey Chapter, N.J. Coalition on Women in Disabilities, Ocean County Chapter

Richard Herring, Director, Division of the Deaf and Hard of Hearing, Dept. of Human Services

Anthony F. Jahn, MD, PA, FACS, FRCS(C), Ear, Nose and Throat Otology and Neurotology, Roseland Surgical Center

Pauline M. Jenson, Ph.D., Executive Director, New Jersey Association for Children with Hearing Impairments, Inc.

Ellen Kelly, MS, CCC-A, Director, Centra State Medical Center and The Center For Speech and Hearing Sciences, Inc.

Kirk Knutsen, MS, CCC-A, Audiologist/Assistant Chief, Speech-Audiology Division, Jersey City Medical Center

Susan M. Majewski, MA, CCC-A, Senior Clinical Audiologist, Elizabeth General Medical Center

Laura S. McKirdy, Ph.D., Principal, Lake Drive School For Deaf & Hard of Hearing Children, Mountain Lakes Public Schools

Mary Jo Santo Pietro, Ph.D., CCC, President, New Jersey Speech-Language-Hearing Association

Shelly D. Secoolish, MA, CCC-A, Senior Clinical Audiologist, Speech and Hearing Associates

Debra Steiner-Dapontes, MSPA, CCC-A, Audiologist, Lourdes Regional Rehabilitation Center, Our Lady of Lourdes Medical Center

Cathleen M. Van Evra, MA, CCC-A, MPA, Manager, Audiology Department, Overlook Hospital

Marykate Vaughn, MA, CCC-A, Senior Clinical Audiologist, Somerset Medical Center

Barbara S. Welsh, MS, RN, NPC, Pediatric Nurse Practitioner, Helene Fuld Medical Center

Kathleen P. Young, MS, CCC, Director, Ciell Institute For Hearing & Speech, Professional Otolaryngology Associates, MD, PA, Stafforshire Professional Center Annette Zaner, Ph.D., Director, Communication Disorders, Catholic Community Services

Deborah R. Welling, MA, CCC-A, Supervisor, Audiology, Catholic Community Services

Virginia Elmer, RN, Pediatric Program Manager, Home Care Resources

Meg Burmeister, ACSW, Pediatric Program Specialist, Home Care Resources

Dorcas A. Heebner, RN, MSN, Director of Nursing-Maternal/Child Health, Burdette Tomlin Memorial Hospital

Judy Donlen, DNSc, RN, Executive Director, Southern New Jersey Perinatal Cooperative

Geraldine Moon, Vice President, New Jersey Hospital Association

Joseph A. Palaia, Senator-District 11, Senate President Pro Tem

Dale Florio, New Jersey HMO Association

Richard Sills, M.D., Co-Chairperson, Sickle Cell Advisory Committee

John Grangeia, Vice President, Professional Services, St. Peter's Medical Center

Jean Buerle Farley, RNC, MSN, Executive Director, Central New Jersey Maternal & Child Health Consortium, Inc.

Mary McTigue, RN, Associate Director of Nursing, Elizabeth General Medical Center

Ilise Zimmerman, Executive Director, Northern New Jersey Maternal Child Health Consortium

Charles A. Scott, M.D., Medford Pediatric & Adolescent Medicine, P.A.

COMMENT: Twenty-one persons expressed support for the readoption of N.J.A.C. 8:19-1, Newborn Hearing Screening. Reasons for support included:

Newborn Hearing Screening rules:

1. Establish guidelines and protocols for birthing facilitites;
2. Emphasize the importance and implications to parents of having their baby placed on the high risk register;
3. Help identify children at risk for or with hearing loss as soon as possible;
4. Help track children considered at risk for hearing impairment;
5. Help establish baseline audiological evaluations, with regard to children at risk for progressive hearing loss, so that medical and educational follow-up can be most effective;
6. Prompt parents to bring in children for a hearing evaluation at a very young age;
7. Prevent children from slipping through the cracks, that is, hearing loss is an invisible handicap; and
8. Aid in early identification of hearing loss (at the prelingual stage), which leads to early and successful intervention, that is, maximized speech/language development, educational, social, and vocational potential, and reduced cost of remediation.

RESPONSE: The Department agrees with all of the above comments in support of the readoption of the rules for Newborn Hearing Screening in New Jersey.

COMMENT: An amendment to the rules for Newborn Hearing Screening would update the risk criteria to be consistent with the recommendations of the Joint Committee on Infant Hearing 1994 Position Statement.

RESPONSE: The Department agrees that risk criteria need to be consistent with the 1994 Position Statement of the Joint Committee on Infant Hearing. An amendment to the rules is planned, which would update the high-risk factors/indicators associated with hearing loss in newborns. The updated indicators associated with hearing loss would be the criteria used for those hospitals implementing the Electronic Birth Certificate (EBC) system, as well as for those hospitals which would continue to use the Newborn Hearing Screening Report and Parental Informed Consent form.

COMMENT: Because risk screening identifies only 50 percent of infants with significant hearing loss, an amendment to the rules for Newborn Hearing Screening would make hearing screening of newborns universal and mandatory, as soon as possible after birth or before three months of age, with intervention taking place by six months of age. The technology is available and not costly; the volume-to-cost ratio would drop considerably as the number of infants tested increased; the healthy development of children would be enhanced, and costly re-education of children identified late with hearing loss would be reduced.

RESPONSE: The Department supports universal detection of hearing loss by three months of age and intervention by six months of age; however, according to a March 1994 survey, birthing facilities in New Jersey are not equally equipped to provide mandated, universal electrophysiological hearing

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screening for newborns by three months of age. (Sixty-five out of the 73 birthing facilities in New Jersey responded to the 1994 survey.) Therefore, the Department proposes to join forces with the New Jersey Speech-Language-Hearing Association, the New Jersey Academy of Pediatrics, the New Jersey Academy of Otolaryngology, the New Jersey Academy Audiology, the New Jersey Academy of Family Physicians, and the birthing facilities in New Jersey to work toward a goal of universal detection of hearing loss in newborns via electrophysiological hearing screening.

Areas of concern to be worked on include: (1) education and outreach, (2) gathering and interpreting statistics, (3) sharing information on techniques, instrumentation, personnel, and pass/fail criteria, and (4) tracking auditory status of New Jersey children from birth to at least five years of age.

COMMENT: Because Newborn Hearing Screening will be merged with the EBC system, an amendment regarding data collection for Newborn Hearing Screening will be needed.

RESPONSE: The EBC system will be implemented on a voluntary basis in New Jersey hospitals in the near future. An amendment to the rules is planned, which would accommodate the transition of hospitals in New Jersey to the EBC system as method of gathering information pertinent to Newborn Hearing Screening.

COMMENT: Newborn biochemical screening is in the best interest of public health. Screening and identifying affected infants can prevent the severe consequences of morbidity and mortality associated with the inborn errors of metabolism. Two responders commended the Department of Health for the effective system of screening newborns for biochemical disorders and supported readoption of the rules.

RESPONSE: The Department of Health agrees that newborn biochemical screening is critical for the well being of children in New Jersey.

COMMENT: Infants are tested for inborn errors of metabolism via a heel stick prior to hospital discharge. When discharged prior to 24 hours, this initial test is inadequate for two of the four diseases. Infants then have to be retested (via a second heel stick), within three to seven days. Three of the commenters felt that this repeat testing is costly, inconvenient to the family, and may be traumatic to the newborn. They further stated that this is unacceptable from both a quality of care and cost of care perspective, and may be creating yet another fragmentation of care. Other commenters noted that repeat testing was essential, since the early tests may not detect all affected children.

RESPONSE: Of the four diseases tested in New Jersey, phenylketonuria (PKU) and congenital hypothyroidism results may be affected by the time of specimen collection (the age of the infant). The remaining two, galactosemia and hemoglobinopathies, are valid in infants who have not had blood transfusions, regardless of when the specimen is collected. All specimens are tested by the Inborn Errors of Metabolism (IEM) Laboratory. Children with PKU, congenital hypothyroidism, and galactosemia need to be identified quickly so they can get appropriate treatment. Although there can be false positives associated with the specimens, children with disease can be identified from "early" tests, and then be referred to treatment in the most timely manner. Unfortunately, the "early" test may miss some affected children (be a false negative) with either PKU or congenital hypothyroidism, which is the reason for requiring a second specimen. Testing of newborns prior to discharge is recommended standard practice by the American Academy of Pediatrics Committee on Genetics. The severe morbidity or even mortality of affected infants can be minimized or avoided with prompt identification and treatment; these benefits justify the second test.

COMMENT: The proposed regulations would require hospitals to continue to be responsible for obtaining a satisfactory biochemical specimen, including those infants discharged prior to 24 hours. The early discharge of mothers and newborns, which is an increasing trend, is a result of insurance policy. Hospitals fulfill their responsibility by obtaining the initial specimen when infants are in their care. Since the newborn is no longer in the hospital when the second specimen needs to be collected, they should not be required to obtain the satisfactory specimen. Nearly all of the commenters had suggestions regarding who should be responsible for the collection of a repeat specimen on newborns discharged early. Among the suggestions were the primary care provider, physicians, insurance companies, clinics, home health care agencies, and parents. Commenters noted that there could be shared responsibility or flexibility regarding which party is held responsible.

RESPONSE: As the commenters noted, there are multiple options for who could be designated as the responsible party either singly or with shared responsibility. There was no consensus among the commenters. Currently, hospitals know which infants will need to be retested because of early discharge; they are in the best position to get an address and other information useful for contacting parents/guardians and to obtain information on the primary care provider. However, as recommendations become available at the national level and as testing methodologies or other events change, the Department will continue to investigate other alternatives, including the role of the parent/guardian.

COMMENT: The tracking of newborns is critical. However, it is an administrative burden for hospitals to maintain and fund a tracking system with decreasing staff. There should be proper reimbursement for the processes, both testing and tracking, involved in newborn screening. The Departments of Health and Insurance should ensure proper reimbursement for the detection of newborn biochemical screening. One responder felt that the burden for tracking falls on private physicians. Physicians have had to repeat specimens due to faulty specimen collection, have had to collect specimens because the hospitals do not want to repeat tests of early discharged infants, and have had to incur the kit cost without reimbursement.

RESPONSE: Historically, hospitals have had to track some infants to obtain repeat specimens, due to unsatisfactory initial samples. Now, because of early discharge, the number of requested repeats has increased. For these infants, it is known at time of discharge that an additional specimen will be necessary. The Health Care Reform Act, P.L. 1992, c.160, eliminated the hospital rate setting system. Staff from the IEM Laboratory have been providing in-service training at numerous sites to improve specimen collection technique. Hospitals remain responsible for collecting a satisfactory specimen.

COMMENT: New Jersey should investigate what other states have done to revise their screening protocols, in light of early discharge.

RESPONSE: New Jersey has been in contact with other states regarding newborn screening. There was a national conference held at the end of March 1995, to discuss newborn screening and early discharge. Draft recommendations were generated, which will be finalized at the end of this year. Included among the recommendations are that infants should be screened as close to discharge as possible and repeat specimens should be taken on infants discharged prior to 24 hours. Some states have instituted mandated second screening of all infants, regardless of time of first specimen collection. One state leaves it to the discretion of the physician to request a second specimen. States vary as to who is responsible for the collection of the second specimen. Nationally, newborn screening practitioners are working toward standardization and consensus as to what is the best policy. This is affected by the size of the birth population, the demographic composition and insurance coverage of the states' population, as well as by program funding and staffing.

COMMENT: The Department of Health should investigate and institute new laboratory tests and methods which would yield accurate results on specimens taken prior to 24 hours.

RESPONSE: The newborn screening program has always been on the cutting edge of biotechnologies and has been relentless in its quest to provide services that are most efficient and effective. In that light, the impact of early postpartum discharge has necessitated a search for diagnostic procedures that generate accurate results on bloodspots taken short of 24 hours. The IEM Laboratory is currently evaluating three such systems for phenylketonuria determinations. While only two of these systems are FDA approved, it will be sometime before parallel testing can be performed and the system that yields the most sensitive and specific results can be adopted.

COMMENT: The mandate that the State Public Health and Environmental Laboratories perform Newborn Biochemical Screening is unnecessary, expensive and not required by Section 26:2-111 of the Health and Vital Statistics Code. Private laboratories licensed by the State should be able to perform the testing with the condition that the test results be forwarded to the Department of Health.

RESPONSE: Section 26:2-111 states that "The Commissioner shall ensure that newborns are so tested in a manner approved by the Commissioner." The Commissioner can best meet this directive uniformly by having the State Public Health and Environmental Laboratories perform all Newborn Biochemical Screening for babies born in New Jersey. In addition, a comprehensive account of the newborns screened needing to be followed can be maintained.

COMMENT: The Department of Health has chosen to implement a charge for repeat testing.

RESPONSE: There was a concurrent rise in workload with the implementation of the Early Discharge Policy. This increase, very early on, put an unmanageable strain on laboratory workers and other resources resulting in the Department's laboratory imposing a fee-for-service schedule for the rapidly increasing specimens load. The decision was made only after all other alternative remedies had been exhausted.

COMMENT: There exists no system to advise the hospital of birth that a repeat test has been submitted by either private pediatrician, clinic or

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alternative hospital. This inefficiency results in expenditures of enormous resources as hospitals continue to try to unnecessarily contact patients about the need for retesting. A system to advise the party responsible for procuring a sample that one has been received via alternative parties is essential.

RESPONSE: A system to advise the hospital of birth that a repeat test has been submitted by either private pediatrician, clinic or alternative hospital is under development. As soon as the EBC system is fully implemented, these matters will be resolved.

COMMENT: Current regulations require that in the event of prolonged hospitalization for specialized medical care, neonates be tested at 48 hours, then weekly until a proper protein feed results in an adequate sample. This should be altered to require an initial 48 hour test and a repeat 24 hours following a protein feed.

RESPONSE: In 1991, meetings were held between medical consultants, laboratory and follow-up personnel, and others to discuss this issue. As a result, a memo was issued in February 1992 with instructions on how to handle infants who are being hospitalized for long periods of time. Infants should be tested at 48 hours. If an infant is on prolonged hyperalimentation and is receiving greater than or equal to 2.5 grams of protein/kilogram, a repeat specimen should be taken, the 24 hour box marked on the specimen collection form, and hyperalimentation noted on the form. For those infants not on hyperalimentation, a repeat specimen will be collected weekly until there have been 24 hours of normal oral feeding on full strength formula.

COMMENT: Whereas one commenter noted that the EBC system would benefit newborn screening, another commenter felt the benefit was unclear for early discharge and newborn screening.

RESPONSE: The EBC system should provide a timely tracking system for all newborns. The benefit of this system to newborn screening is that it will allow for identification of infants who have not been screened or whose specimens have not reached the IEM Laboratory, and have critical information regarding parents address(es), insurance coverage, time of discharge, and other important items. With this system, it will be possible to determine what percent of newborns are actually screened for inborn errors of metabolism. The EBC system also centralizes the collected information into a single system, which should benefit both the hospital and the Department.

COMMENT: There are seven licensed Maternal and Child Health Consortia in New Jersey, which are responsible for the development and implementation of regional systems. The three Consortia which responded offered their continuing assistance to expedite a coordinated approach to newborn biochemical screening, in order to ensure that a cost-effective and accurate system is maintained.

RESPONSE: The Department welcomes the opportunity to work with the Consortia on this important issue.

COMMENT: Not only does early discharge affect newborn screening, but the broader issue of shortened postpartum stays needs to be addressed by the Department of Health. Some women discharged within 24 hours have home visits, while others without this service are left to their own devices. A comprehensive system to include immunizations would improve the quality of health of newborns.

RESPONSE: The discussion of the effects of early discharge on newborn screening began in the Division of Family Health Services, and was formalized as part of the Early Maternity Discharge and Home Visiting Task Force. The Department is aware that early discharge affects not only newborn screening, but also could affect other newborn issues such as overall health status, feeding, and detection of some newborn conditions. Mothers discharged early are also of concern. The Department continues to investigate the effects of early discharge on mothers and newborns. Included in these discussions has been the role of comprehensive and well planned home visits. Immunizations initiated at birth with Hepatitis B vaccine and continued in accordances to accepted schedules will also be included in the discussions of early discharge.

Executive Order No. 27 Statement

Currently, there are no Federal standards or requirements which mandate screening newborns for either inborn errors of metabolism or to detect risk factors for possible hearing loss. N.J.S.A. 26:2-110 and 111 require the Department of Health to test newborns for the purpose of early detection and treatment of biochemical disorders. N.J.S.A. 26:2-101 requires all newborns in New Jersey to be screened for risk factors for possible hearing loss.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:20.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Administrative Corrections
Hospital Licensing Standards
Administrative and Hospital-wide Policies and Procedures
Smoke-free Policy
N.J.A.C. 8:43G-5.2

Take notice that the Department of Health has discovered errors in the current text of N.J.A.C. 8:43G-5.2. In a notice of proposal published November 21, 1994 at 26 N.J.R. 4537(a), there appears at 26 N.J.R. 4544, under the section heading "8:43G-5.1 Administrative and hospital-wide structural organization," a proposed deletion of subsections (l), (n) and (o) and an amendment to subsection (m). However, the subsection text published and intended for revision by the Department (see PRN 1994-615) was actually that of N.J.A.C. 8:43G-5.2, Administrative and hospital wide policies and procedures. This depiction of the intended change due to proposal processing error was carried through the notice of adoption at 27 N.J.R. 1290(a), resulting in the addition of subsection (l) to N.J.A.C. 8:43G-5.1, incorporated into the Code through the 3-20-95 Code update. Due to miscommunication with the Office of Administrative Law, a notice of administrative change published in the April 17, 1995 New Jersey Register at 27 N.J.R. 1615(a) did not result in the intended correction of the proposal error, but only in the movement of N.J.A.C. 8:43G-5.1(l) to N.J.A.C. 8:43G-5.2(q). This notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7, will revise the text of N.J.A.C. 8:43G-5.2 to accurately correspond to the proposed and adopted text, and rectify the erroneous notice of administrative change.

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

8:43G-5.2 Administrative and hospital-wide policies and procedures

(a)-(k) (No change.)

[(l) Smoking rules shall be developed, implemented, and enforced until January 1, 1992 in accordance with N.J.S.A. 26:3D-1 et seq. These rules shall include prominently marking areas which, at the option of the hospital, have been designated for smoking and at least:

1. No smoking in patient rooms on pediatric patient care units;

2. No smoking in any area where there are flammable liquids or gases; and

3. No smoking by any volunteers or staff in the presence of patients.]

[(m)]**(l)** The hospital shall develop **and implement a policy for the facility to be smoke-free by April 1, 1995. The hospital shall ensure that there is no smoking in the facility by employees, visitors or patients.** [a program to become smoke-free and shall become smoke-free by January 1, 1992. Smoke-free means a total ban on smoking in the facility by employees, visitors and patients except that, at institutional option, controlled smoking by patients may be permitted in a designated area with outside ventilation. Patients may smoke only on written orders of the attending physician when the physician has concluded that smoking is in the best interest of the patient.]

[(n) If the hospital permits controlled smoking by patients, any room designated for smoking shall not share the same ventilation system as rooms occupied by patients and/or nonsmokers.

(o) The hospital shall have a written policy establishing the maximum number of patients permitted in a designated smoking room at the same time; and procedures for monitoring patients while in the smoking room. The maximum number of patients permitted in a designated smoking room at the same time shall not exceed five smokers per 100 square feet.]

[(p)]**(m)** (No change in text.)

[(q) The Hospital shall develop and implement a policy for the facility to be smoke-free by April 1, 1995. The Hospital shall ensure that there is no smoking in the facility by employees, visitors or patients.]

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(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL, AND OCCUPATIONAL HEALTH SERVICES

Adopted Repeal and New Rule: N.J.A.C. 8:57-1

Proposed: February 6, 1995 at 27 N.J.R. 420(a).

Adopted: May 8, 1995 by Len Fishman, Commissioner, Department of Health and the Public Health Council, John D. Slade, M.D.

Filed: May 11, 1995 as R.1995 d.277, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 26:1A-7 and 26:4-1.

Effective Date: June 5, 1995.

Expiration Date: April 12, 2000.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing concerning the proposed readoption, repeal and new rule was held on March 13, 1995 at the Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey. The hearing officer was John D. Slade, M.D., Chairperson, Public Health Council. No one from the public attended or commented. The hearing officer made no recommendations. The hearing record may be reviewed by contacting Sue Eates, Department of Health, CN 360, Trenton, NJ 08625.

Summary of Public Comments and Agency Responses:

Opportunity to be heard regarding the proposal was invited via notice published on February 6, 1995 at 27 N.J.R. 420(a). The Department also mailed notice of the proposal to representatives of organizations which would be affected by the rule and to individuals and groups who had previously expressed interest in receiving said notice.

The public comment period closed on March 13, 1995. The comments are available for inspection at the Office of the Assistant Commissioner, Division of Epidemiology, Environmental, and Occupational Health Services, University Office Plaza, 3635 Quakerbridge Road, Trenton, New Jersey 08619-1247.

Written comments were received from David A. Henry, Health Officer, Township of Montgomery; Christine Reynolds, New Jersey Family Planning League, Inc.; Virginia Sturmfels, Corning MetPath Clinical Laboratories; and Rosalie Becce, R.N., B.A.C.I.C.; and Kenneth Wolski, R.N., Association for Professionals in Infection Control and Epidemiology.

COMMENT: One commenter proposed that insurance companies, instead of health care providers and laboratories, report communicable disease diagnoses to the Department. After receiving the reports from the health insurers, it was further suggested that the Department use the Consumer Health Services' Electronic Notification System to notify the appropriate local health departments.

RESPONSE: The Department cannot accept this suggestion. The suggested system would leave severe gaps in reporting. There are an estimated 800,000 to 1,000,000 New Jersey residents who do not have health insurance. In addition, many residents are covered by Medicare or Medicaid only. The system, as proposed by the commenter, would not provide a mechanism for reporting a diagnosed reportable disease for the uninsured or those covered by Medicare or Medicaid. In addition, not all physician-patient encounters which may result in the diagnosis of a reportable disease are covered by health insurance.

COMMENT: Two commenters supported the proposed revisions to the rule and supported the elimination of duplication of reporting.

RESPONSE: The Department acknowledges the commenters' support of the rule revision and appreciates those comments.

COMMENT: One commenter proposed that a clearer explanation is needed when the terms infectious and communicable are used in the same context.

RESPONSE: Although there should not be any confusion regarding these two terms, the Department has revised the rules, where appropriate, to replace the word/term "infectious" with the term "communicable."

COMMENT: One commenter expressed concern about the workload impact on already busy infection control departments by requiring reports every two weeks on cases of organ failure of presumed communicable or undetermined etiology to the Department. The commenter also expressed concern about what feedback can be expected from the Department regarding these reports.

RESPONSE: The Department hopes that by the time this rule is effective, electronic database reporting by hospital laboratories will also be implemented. The relief in workload provided by electronic disease reporting should more than cover the amount of time needed to complete these new reports. The Department is already piloting an information feedback system for the reporters of disease incidence data within the Pediatric Infectious Disease Sentinel Surveillance System.

COMMENT: One commenter expressed concern about confidentiality regarding nosocomial outbreaks or suspected nosocomial outbreaks.

RESPONSE: There is no change in the confidentiality of patient records. Personal identifying information will continue to be protected from public release.

COMMENT: One commenter requested clarification that a positive culture, test, or assay result to be reported shall be indicative of active or acute infection.

RESPONSE: The Department agrees that not all positive test results are indicative of active or acute disease. Periodically, the Department will issue guidelines listing specific tests whose results are to be reported under this rule. Because laboratory techniques are constantly being updated, it is neither possible nor practical to list specific tests in the rules.

COMMENT: One commenter recommended that only tests specific for *Treponema pallidum* be reportable.

RESPONSE: The rules already contain language so that only test results specific for the listed diseases are reportable.

COMMENT: One commenter recommended that only *Neisseria meningitidis* isolated from cerebrospinal fluid or blood be reportable, thus eliminating reports of isolates from needle aspirates or any other normally sterile sites.

RESPONSE: The Department desires reporting of all laboratory evidence of clinically invasive *Neisseria meningitidis* disease. This would include needle aspirates and evidence of infection in any other normally sterile body site.

COMMENT: One commenter asked if acid fast bacilli includes positive AFB smears and, if so, from what specific sources.

RESPONSE: Acid fast bacilli does include positive AFB smears taken from any body site.

COMMENT: One commenter questioned the public health significance of *Helicobacter pylori.*

RESPONSE: The Department had expected that the public health significance of this organism and an acceptable laboratory test for it would have been established by the effective date of these rules. Since this has not occurred, the Department will drop this organism from the reporting requirements of the rules.

Summary of agency-initiated changes:

The Department has made a technical change in punctuation, and minor changes in order to clarify the intent of the rules and to use consistent wording as follows:

1. The following technical change has been made to correct a printing error. At N.J.A.C. 8:57-1.2, in the definition of "[c]ommunicable disease", the word "of" in the fourth line has been changed to "or."
2. At N.J.A.C. 8:57-1.3(a), the phrase "local health department" has been changed to "health officer" for consistency.
3. At N.J.A.C. 8:57-1.6(a), the phrase "local health department" has been changed to "health officer" for consistency.
4. The following technical change has been made to correct a printing error. At N.J.A.C. 8:57-1.6(a)2, "Antibiotic-resistent" has been changed to "Antibiotic-resistant."
5. The following technical change has been made to correct a printing error. At N.J.A.C. 8:57-1.6(g)8, the word "of" has been changed to "or."

Executive Order No. 27 Statement

The adoption of N.J.A.C. 8:57-1 is not proposed under the authority of or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements.

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

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SUBCHAPTER 1. REPORTABLE COMMUNICABLE DISEASES

8:57-1.1 Purpose and scope

(a) The purpose of this subchapter is to expedite the reporting of certain diseases or outbreaks of disease so that appropriate action can be taken to protect the public health. The latest edition of the American Public Health Association's publication, "Control of Communicable Disease in Man," should be used as a reference, providing guidelines for the characteristics and control of communicable diseases, unless other guidelines are issued by the Department.

(b) For purposes of research, surveillance, and/or in response to technological developments in disease detection or control, the Commissioner, or his or her designee, is empowered to amend the diseases specified in this subchapter for such periods of time as may be necessary to control disease, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

8:57-1.2 Definitions

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

"Child care center means any home or facility required to be licensed by the Department of Human Services which is maintained for the care, development, or supervision of six or more children under six years of age who attend for less than 24 hours a day.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from an infected person, animal, or inanimate reservoir to a susceptible host, either directly *[of]* ***or*** indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

"Department" means the New Jersey State Department of Health.

"Health officer" means a holder of a license as health officer issued by the State Department of Health, pursuant to N.J.S.A. 26:1A-38 et seq., who is employed by a local board of health to function during all working hours of the regularly scheduled work week of the governmental unit to which the local health agency is attached and not regularly employed during the working hours of that scheduled work week in other activities for which he or she receives remuneration.

"Health care provider" means a person who is directly involved in the provision of health care services, such as the clinical diagnosis and prescribing of medications, and when required by State law, the individual has received professional training in the provision of such services and is licensed or certified for such provision. This includes physicians, physician assistants, and nurse practitioners.

"Hospital" means an institution, whether operated for profit or not, which maintains and operates facilities for the diagnosis, treatment, or care of two or more non-related individuals suffering from illness, injury or deformity and where emergency, out-patient, surgical, obstetrical, convalescent, or other medical and nursing care is rendered for periods exceeding 24 hours.

"Local health department" means the board of health of a region or municipality or the boards, bodies, or officers in such region or municipality lawfully exercising any of the powers of a local board of health under the laws governing such region or municipality.

"May" means that the action referred to is discretionary.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Nosocomial infection" means an infection occurring in a patient in a hospital or other health care facility and in whom it was not present or incubating at the time of admission, or the residual of an infection acquired during a previous admission. This term includes infections acquired in the hospital but appearing after discharge, and also such infections among the staff of the facility.

"Outbreak" means any unusual occurrence of disease or any disease above background or endemic levels. Endemic level refers to the usual prevalence of a given disease within a geographic area.

1. "Suspected outbreak" means an outbreak which appears to meet the definition of an outbreak, but has not yet been confirmed.

"Outpatient-based setting" means a setting in which preventive, diagnostic, and treatment services are provided to persons who come to the facility to receive services and depart from that facility the same day. This term includes, but is not limited to, private physicians offices, health maintenance organizations, clinics, public health centers, diagnostic centers, and treatment centers.

"Pediatric surveillance system" means a group of primary care pediatricians and family practice physicians who report weekly or monthly to the Department the number of patient diagnoses made in their practice by disease code.

"School" means any building, structure, or part thereof used for purposes of the education of children between grades kindergarten through 12 whether publicly or privately owned.

"Shall" means that the action referred to is mandatory.

"Venereal disease" means syphilis, gonorrhea, chancroid, lymphogranuloma venereum, and granuloma inguinale.

8:57-1.3 Diseases which are immediately reportable

(a) The following diseases shall be reported immediately to the *[local health department]* ***health officer***:

1. Botulism *(Clostridium botulinum);*
2. Diphtheria *(Corynebacterium diphtheriae);*
3. *Haemophilus influenzae, invasive disease*;
4. Hepatitis A, institutional settings;
5. Measles;
6. Meningococcal disease (*Neisseria meningitidis*);
7. Pertussis (whooping cough, *Bordetella pertussis*);
8. Plague *(Yersinia pestis)*;
9. Poliomyelitis;
10. Rabies (human illness);
11. Rubella;
12. Viral hemorrhagic fevers, including, but not limited to, Ebola, Lassa, and Marburg viruses;
13. Foodborne intoxications, including, but not limited to, ciguatera, paralytic shellfish poisoning, scombroid, or mushroom poisoning; and
14. Any foodborne, waterborne, nosocomial, outbreak or suspected outbreak or any outbreak or suspected outbreak of unknown origin.

(b) A health care provider, a chief executive officer or other person having control or supervision over a hospital, a laboratory director, an institutional superintendent, a child care center or preschool director, or a principal having knowledge of any person who is ill or infected with any disease listed in (a) above, or any communicable disease, whether confirmed or presumed, shall immediately report the facts by telephone to the health officer of the jurisdiction wherein the diagnosis is made. Such telephone report shall be followed up by a written or electronic report within 24 hours of the initial report. If the health officer is unavailable, the report shall be made to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends and holidays) or by fax (609-588-7431).

8:57-1.4 Reporting of diseases in an outpatient-based setting

(a) In addition to the reporting requirements of N.J.A.C. 8:57-1.3, any single case, either confirmed or presumed, of the following diseases diagnosed in an outpatient-based setting shall be reported by a health care provider to the local health department:

1. An enteric disease, either in a child who attends a day care center or in a foodhandler;
2. Hemorrhagic colitis;
3. Kawasaki disease (mucocutaneous lymph node syndrome);
4. Lyme disease;
5. Measles;
6. Mumps;
7. Pertussis;
8. Rabies, animal bites treated for rabies;
9. Rubella;
10. Syphilis, primary; and
11. Tuberculosis.

(b) A health care provider attending any person who is ill or infected with any disease listed in (a) above shall, within 24 hours of diagnosis, make a report as set forth in (c) below to the health officer of the jurisdiction wherein the diagnosis is made. If the health officer is unavailable, the report shall be made to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends and holidays) or by fax (609-588-7431). In cases of

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venereal diseases and tuberculosis, the reports shall be submitted directly to the Department.

(c) The report shall include the name, municipality and telephone number of the reporting health care provider; the name of the disease; the name, age, date of birth, gender, home address and telephone number of the person ill or infected with such disease; the date of onset of illness; and such other information as may be requested by the Department.

(d) A health care provider may delegate this reporting activity to a staff member, but this delegation does not relieve the health care provider of the ultimate reporting responsibility.

(e) A health care provider who fails to report pursuant to the requirements of this section may receive written notification of this failure and a warning. A health care provider who, despite warning, continues to fail to comply with the reporting requirements, shall be subject to a fine pursuant to the provisions of N.J.S.A. 26:4-129. A health care provider whose failure to report is determined by the Department to have significantly hindered public health control measures, shall be subject to other actions, including, but not limited to, notification of the violation to the State Board of Medical Examiners or State Board of Nursing, as the case may be, and/or appropriate hospital medical directors or administrators.

(f) A health care provider who participates in the Department's Pediatric Surveillance System shall submit data as outlined by the Pediatric Surveillance System. Reports made, maintained, or kept on file pursuant to this section shall not be disclosed with any identifying information.

8:57-1.5 Reporting of diseases from hospitals

(a) In addition to the reporting requirements of N.J.A.C. 8:57-1.3, any single case, either confirmed or presumptive, of the following diseases, diagnosed in or admitted to, a hospital shall be reported by the chief executive officer or other person having control or supervision over the hospital to the health officer having jurisdiction over the locality in which the hospital is located:

1. Anthrax;
2. Arboviral diseases;
3. Creutzfeld-Jakob disease;
4. Guillain-Barre syndrome;
5. Hemolytic uremic syndrome;
6. Kawasaki disease (mucocutaneous lymph node syndrome);
7. Legionnaires' disease, nosocomial;
8. Rabies, animal bites treated for rabies;
9. Rheumatic fever, acute;
10. Rubella, congenital;
11. Tetanus;
12. Toxic shock syndrome, streptococcal;
13. Trichinosis;
14. Tuberculosis; and
15. Yellow fever.

(b) The chief executive officer or any other person having control or supervision over a hospital with a person who is ill or infected with any of the diseases listed in (a) above shall, within 24 hours of diagnosis, make a written report as set forth in (c), below, to the health officer of the jurisdiction in which the hospital is located. If the health officer is unavailable, the report shall be made to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends and holidays) or by fax (609-588-7431). In cases of tuberculosis, the report shall be submitted directly to the Department.

(c) The report shall include the name, municipality, and telephone number of the hospital; the name of the disease; the name, age, date of birth, gender, home address and telephone number of the person who is ill or infected with such disease; the date of onset of illness; and such other information as may be requested by the Department.

(d) A chief executive officer or other person having control or supervision over the hospital may delegate these reporting activities to a staff member, but this delegation does not relieve a chief executive officer or other person having control over the hospital of the ultimate reporting responsibility.

(e) A chief executive officer or other person having control or supervision over a hospital who fails to report pursuant to the provisions of this section may receive written notification of this failure and a warning. Responsible parties who, despite warning, continue to fail to comply with these reporting requirements, shall be subject to a fine, pursuant to the provisions of N.J.S.A. 26:4-129. A chief executive officer or other person having control or supervision over a hospital whose failure to report is determined by the Department to have significantly hindered public health control measures shall be subject to other actions, including, but not limited to, notification of the violation to the Department's Division of Health Facilities Evaluation and any other licensing review organizations.

(f) Notwithstanding the provisions of this rule, a chief executive officer or any other person having control or supervision over a hospital in which an outbreak or suspected outbreak occurs shall make a report as set forth in (c) above to the health officer of the jurisdiction in which the hospital is located. If the health officer is unavailable, the report shall be made to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends and holidays) or by fax (609-588-7431).

(g) A chief executive officer or any other person having control or supervision over a hospital shall, within 31 calendar days of the end of each month, submit data regarding specific microorganisms occuring during that month within the hospital to the Department, utilizing the Epidemiology Surveillance Form. Reports made, maintained, or kept on file pursuant to this section shall not be public records.

(h) Effective July 1, 1995, pediatric intensive care units shall, on a weekly basis, report cases of organ failure of presumed *[infectious]* ***communicable*** or undetermined etiology to the Department. The report may be made to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends and holidays) or by fax (609-588-7431). Reports made, maintained, or kept on file pursuant to this subsection shall not be disclosed with any identifying information.

(i) Effective July 1, 1996, medical intensive care units shall, on a weekly basis, report cases of organ failure of presumed *[infectious]* ***communicable*** or undetermined etiology to the Department. The reports may be made to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends and holidays) or by fax (609-588-7431). Reports made, maintained, or kept on file pursuant to this subsection shall not be disclosed with any identifying information.

8:57-1.6 Reporting of diseases from laboratories

(a) In addition to the reporting requirements of N.J.A.C. 8:57-1.3, any positive culture, test, or assay result specific for one of the following organisms shall be reported by a laboratory director to the *[local health department]* ***health officer***:

1. Acid fast bacilli;
2. Antibiotic-*[resistent]* ***resistant*** organisms (hospital-based laboratories only);
3. Arboviruses;
4. *Babesia spp.;*
5. *Bacillus anthracis;*
6. *Bordetella pertussis;*
7. *Borrelia burgdorferi;*
8. *Brucella spp.;*
9. *Campylobacter jejuni;*
10. *Chlamydia pneumoniae;*
11. *Chlamydia psittaci;*
12. *Chlamydia trachomatis;*
13. *Clostridium botulinum;*
14. *Clostridium tetani;*
15. *Corynebacterium diphtheriae;*
16. *Cryptosporidium spp.;*
17. Ebola virus;
18. *Entamoeba histolytica;*
19. *Ehrlichia canis;*
20. *Escherichia coli 0157:H7;*
21. Foodborne intoxications, including, but not limited to, ciguatera, paralytic shellfish poisoning, scombroid, or mushroom poisoning;
22. *Francisella tularensis;*

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23. *Giardia lamblia;*
24. Hanta virus;
25. *Haemophilus ducreyi;*
26. *Haemophilus influenzae isolated from cerebrospinal fluid, blood, needle aspirate, or sputum;*
*[27. *Helicobacter pylori;*]*
*[28.]***27.*** Hepatitis A;
*[29.]***28.*** Hepatitis B;
*[30.]***29.*** Hepatitis C;
*[31.]***30.*** Human papillomavirus;
*[32.]***31.*** Lassa virus;
*[33.]***32.*** *Legionella pneumophila;*
*[34.]***33.*** *Leptospira interrogans;*
*[35.]***34.*** *Listeria monocytogenes;*
*[36.]***35.*** Marburg virus;
*[37.]***36.*** Mumps virus;
*[38.]***37.*** *Mycobacterium, atypical;*
*[39.]***38.*** *Mycobacterium leprae;*
*[40.]***39.*** *Mycobacterium tuberculosis;*
*[41.]***40.*** *Neisseria gonorrhoeae;*
*[42.]***41.*** *Neisseria meningitidis* isolated from cerebrospinal fluid, blood, needle aspirate, or any other normally sterile site;
*[43.]***42.*** *Plasmodium spp.;*
*[44.]***43.*** Polio virus;
*[45.]***44.*** Rabies virus;
*[46.]***45.*** *Rickettsia spp.* including *Coxiella burnetii* and *Rickettsia rickettsii*;
*[47.]***46.*** Rubella virus;
*[48.]***47.*** Rubeola virus;
*[49.]***48.*** *Salmonella spp.;*
*[50.]***49.*** *Shigella spp.;*
*[51.]***50.*** *Streptococcus pyogenes*, Group A, isolated from cerebrospinal fluid or blood;
*[52.]***51.*** *Streptococcus agalactiae*, Group B, perinatal isolated from cerebrospinal fluid or blood;
*[53]***52.*** *Treponema pallidum* (syphilis);
*[54.]***53.*** *Trichinella spiralis;*
*[55.]***54.*** *Vibrio spp.;*
*[56.]***55.*** *Yersinia enterocolitica;*
*[57.]***56.*** *Yersinia pestis; and*
*[58.]***57.*** Antibiotic sensitivity for *M. tuberculosis.*

(b) A laboratory director shall report positive cultures or positive laboratory test results for the microorganisms listed in (a) above within five business days after obtaining a positive result. The reports shall be submitted in writing to the health officer having jurisdiction over the locality in which the health care provider requesting the laboratory examination is located.

1. Specific testing procedures for the organisms in (a) above shall be made available periodically from the Department.

2. In cases of venereal diseases, tuberculosis, and *Chlamydia trachomatis*, the reports shall be submitted directly to the Department, no later than 72 hours after the close of business on the day on which the positive cultures or positive test results were obtained.

(c) The report shall contain, at a minimum, the reporting laboratory's name, address, and telephone number; the name, age, sex, and address of the person tested; the test performed; the date of testing; the test results; and the health care provider's name and address.

(d) A laboratory director may delegate reporting and specimen submission activities, as delineated in (g) below, to a staff member, but this delegation does not relieve a laboratory director of the ultimate reporting responsibility.

(e) A laboratory director who fails to fulfill the reporting requirements and the specimen submission requirements of this section may receive written notification of this failure and a warning to comply. A laboratory director who, despite warning, continues to fail to comply with these reporting requirements, shall be subject to a fine pursuant to the provisions of N.J.S.A. 26:4-129. A laboratory director whose failure to report is determined by the Department to have significantly hindered public health control measures shall be subject to other actions, including, but not limited to, reporting such failure to the Department's Clinical Laboratory Improvement Services.

(f) Notwithstanding the provisions of this section, laboratory results indicative or suggestive of the existence of an outbreak of disease, or of any single case of a disease listed in N.J.A.C. 8:57-1.3(a), shall be immediately reported by telephone to the health officer in whose jurisdiction the case is located. A follow-up written report shall be submitted within five business days after the initial report. If the health officer is unavailable, the report shall be made to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends and holidays) or by fax (609-588-7431).

(g) A laboratory director shall submit, to the State Department of Health, Division of Public Health and Environmental Laboratories, John Fitch Plaza, Market and Warren Streets, Trenton, NJ 08625-0361, for further testing, all microbiologic cultures obtained from human or food specimens of the following organisms:

1. *Escherichia coli 0157:H7*;
2. *Haemophilus influenzae* isolated from cerebrospinal fluid or blood;
3. *Legionella pneumophila;*
4. *Neisseria meningitidis;*
5. *Salmonella spp.;*
6. *Shigella spp.;*
7. *Streptococcus pyogenes* isolated from cerebrospinal fluid or blood;
8. Penicillin-resistant *Streptococcus pneumoniae* isolated from cerebrospinal fluid *[of]* ***or*** blood; and
9. Vancomycin-resistant *Enterococcus spp.* isolated from cerebrospinal fluid or blood.

8:57-1.7 Reporting of disease outbreaks occurring in institutions and schools

(a) A chief executive officer, superintendent, or other person having control or supervision over any institution such as a sanitarium, nursing home, shelter for the homeless, penal institution, child care center, preschool, school, or college in which an outbreak or suspected outbreak occurs shall immediately report this event by telephone to the health officer having jurisdiction over the locality in which the institution or school is located.

1. If the outbreak occurs in a State institution, the outbreak shall be immediately reported to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends and holidays) or by fax (609-588-7431).

(b) The reports shall include the name, municipality and telephone number of the institution or school; the name of the disease or suspected disease; the number ill; dates of onset; symptomology; pertinent medical history and available diagnostic confirmation; and such other information as may be requested by the health officer or the Department.

(c) A chief executive officer, superintendent, or other person having control or supervision over the institution may delegate these reporting activities to a staff member, but this delegation does not relieve the superintendent of the ultimate responsibility.

(d) A chief executive officer, superintendent, or other person having control or supervision over an institution in which an outbreak or suspected outbreak occurs who fails to report pursuant to the requirements of this section may receive written notification of this failure and a warning to comply. A responsible party who, despite warning, continues to fail to comply with these reporting requirements, shall be subject to a fine pursuant to the provisions of N.J.S.A. 26:4-129. A responsible party whose failure to report is determined by the Department to have significantly hindered public health control measures shall be subject to other actions, including, but not limited to, notification to the Department's Division of Health Facilities Evaluation, the Department of Human Services, or the Department of Education, as the case may be, and other licensing review organizations as appropriate.

8:57-1.8 Reporting of diseases by health officers

(a) A health officer who is notified of any disease outbreak, or of any single case of a disease listed in N.J.A.C. 8:57-1.3(a), shall immediately notify the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends and holidays) or by fax (609-588-7431).

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(b) A health officer who is notified of the existence of diseases pursuant to the provisions of N.J.A.C. 8:57-1.4, 1.5, 1.6, and 1.7 shall, within 24 hours of receipt of the report, forward a copy thereof to the Department. If the initial report is incomplete, a health officer shall seek complete information and shall provide all available information to the Department within five working days of receiving the initial report.

(c) A health officer who is notified of any outbreak of disease, or of any single case of a disease listed in N.J.A.C. 8:57-1.3(a), which is not within that health officer's jurisdiction shall immediately notify the health officer where the disease was believed to have been contracted and the health officer of the local health agency wherein the home address of the ill or affected person is located, as the case may be. If either of the said health agencies are not located in New Jersey, the health officer shall forward this information to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends, and holidays) or by fax (609-588-7431).

(d) A health officer may delegate reporting activities to a staff member, but this delegation shall not relieve the health officer of the ultimate reporting responsibility.

(e) A health officer who fails to report pursuant to the provisions of this section shall receive written notification of this failure and a warning. A health officer who, despite warning, fails to comply with these reporting requirements, shall be subject to a fine pursuant to the provisions of N.J.S.A. 26:4-129. A health officer whose failure to report is determined by the Department to have significantly hindered public health control measures shall be subject to other actions, including notification to the Department's Public Health Licensing and Examination Board and the Public Health Council.

8:57-1.9 Health officer investigations

(a) A health officer shall, upon receiving a report of an outbreak or suspected outbreak of any communicable disease, or of a case or suspected case of any *[infectious]* ***communicable*** disease, investigate the facts contained in the report. A health officer shall follow such direction regarding the investigation as may be given by the Department.

(b) The health officer performing investigation set forth in (a) above shall, at a minimum:

1. Determine whether a single case or an outbreak of a reportable disease exists;

2. Ascertain the source and spread of the infection; and

3. Determine and implement appropriate control measures.

(c) The health officer shall immediately relay all available information pertaining to the investigation to the Department by telephone (609-588-7500, during business hours; 609-392-2020, after business hours, on weekends, and holidays) or by fax (609-588-7431).

(d) The Department may require more than one health officer to participate in the investigation. The health officers may include those having jurisdiction over:

1. The location of suspected transmission of disease;

2. Areas of residence or occupation of person(s) believed to be ill or infected;

3. Sites of institutions where such persons may be located or receive care; and

4. Other jurisdictions which are determined to be appropriate and necessary by the Department.

8:57-1.10 Isolation and restriction for communicable disease

(a) A health officer or the Department, upon receiving a report of a communicable disease, shall, by written order, establish such isolation or other restrictive measures required by statute or rule to prevent or control disease. If, in the judgment of the health officer or the Department, it is necessary to provide adequate isolation, a health officer or the Department shall promptly remove, or cause to be removed, a person who is ill with a communicable disease to a hospital. Such order shall remain in force until terminated by the health officer or the Department.

(b) A health officer or the Department may restrict access of the individuals permitted to come in contact with or visit a person who is hospitalized or isolated under authority of this section.

(c) The Department or health officer, if authorized by local ordinance or by the Department, may, by written order, restrict any person who has been exposed to a communicable disease, under conditions he or she may specify; providing such period of restriction shall not exceed the period of incubation of the disease.

(d) A person who is responsible for the care, custody, or control of a person who is ill or infected with a communicable disease shall take all measures necessary to prevent transmission of the disease to other persons.

8:57-1.11 Medical examination and specimen submission

(a) The Department or a health officer may order a person who is suspected of being ill or infected with a reportable or communicable disease, or who has been exposed to a reportable or communicable disease, to submit to physical examination, X-ray studies, laboratory studies, and such other diagnostic procedures as deemed necessary to determine whether or not such person is *[infectious]* ***communicable*** to others or is a carrier of disease.

(b) Any person who is ordered to submit to examination and/or to submit specimens under (a) above shall comply with the order.

(c) Specimens obtained under the authority of this chapter and under provisions of this rule shall be submitted to a laboratory which is approved by the Department for examination of such specimens.

8:57-1.12 Foodhandlers ill or infected with communicable diseases

(a) A person who is ill or infected with a communicable disease which may be transmitted through food may, based on the type of organism, job function of the person, and the virulence of the disease, be prohibited by a health officer or the Department from working in any occupation that manufactures, processes, stores, prepares, or serves food for public consumption. A person who resides in, boards at, lodges in, or visits a household where that person may come in contact with any person who is ill or infected with a communicable disease which may be transmitted through food may be prohibited by the health officer or the Department from working in any occupation that manufactures, processes, stores, prepares, or serves food for public consumption.

(b) A person who is employed in any establishment where food is manufactured, processed, stored, prepared, or served for public consumption may be required by a health officer or the Department, if a communicable disease is suspected, to submit to a physical examination and/or submit specimens of blood, bodily discharges, or other specimens for the purpose of ascertaining whether or not they are ill or infected with a communicable disease.

(c) A health officer or the Department may prohibit the sale or distribution of food which:

1. Has been prepared by a person who is ill or infected with a communicable disease which may be transmitted through food; or

2. Is considered to be a possible vehicle for spread of disease.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:57.

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HUMAN SERVICES

(a)

JUVENILE MONITORING UNIT

Manual of Standards for Juvenile Detention Facilities

Readoption with Recodification: N.J.A.C. 10A:32 Recodified as N.J.A.C. 10:19

Proposed: March 20, 1995 at 27 N.J.R. 1101(a).
Adopted: May 11, 1995 by William Waldman, Commissioner, Department of Human Services.
Filed: May 12, 1995 as R.1995 d.293, **without change**.
Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 2A:4A-37(e).
Effective Date: Readoption, May 12, 1995;
Recodification and amendments, June 5, 1995.
Expiration Date: May 12, 2000.

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

Full text of the readoption with recodification follows:

CHAPTER 19
MANUAL OF STANDARDS FOR JUVENILE DETENTION FACILITIES

10:19-1.1 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.
"Delinquency" means the commission of an act by a juvenile which if committed by an adult would constitute:
1. A crime;
2. A disorderly persons offense or petty disorderly persons offense; or
3. A violation of any other penal statute, ordinance, or regulation, except that such violations concerning the regulation of vehicles, bicycles, and power vessels as specified in N.J.S.A. 2A:4A-23 shall not constitute delinquency. (N.J.S.A. 2A:4A-23).
"Department" means the New Jersey Department of Human Services.
"Detention" means the temporary care of juveniles in physically restricting facilities pending court disposition. (N.J.S.A. 2A:4A-22c).
. . .
"Juvenile" means an individual who is under the age of 18 years. (N.J.S.A. 2A:4A-22a).
. . .

10:19-1.2 (No change in text.)

10:19-2.1 Legal authority of Department
(a) N.J.S.A. 2A:4A-37 provides that the State Department of Corrections shall specify the place where a juvenile may be detained, and that no juvenile shall be placed in detention in any place other than that specified by the State Department of Corrections. Pursuant to Reorganization Plan 001-93, this authority was transferred to the Department of Human Services, effective July 1, 1993.
(b) (No change.)

10:19-2.2 Inspection provision
(a) As provided by N.J.S.A. 30:1B-10, 30:1-14, and 30:1-15, the Department has the power of visitation and inspection of all juvenile detention facilities.
(b)-(c) (No change.)

10:19-2.3 Enforcement
(a) (No change.)
(b) The Department, in accordance with N.J.S.A. 30:1B-6 and 30:1-16, has the authority to institute such legal proceedings or processes as may be necessary to remedy improper conditions in the detention facilities.
(c) (No change.)
Recodify existing 10A:32-2.3 through 3.2 as 10:19-2.3 through 3.2 (No change in text.)

10:19-4.1 Location and building approval
(a) No detention facility shall be part of, attached to, or in any way physically connected to a facility providing shelter care, as defined in N.J.S.A. 2A:4A-22(d).
(b)-(c) (No change.)
(d) Plans for new buildings, or renovations to existing buildings, shall be submitted to the Department for review, recommendations, and approval. To qualify for approval by the Department, plans and specifications must be in compliance with the appropriate provisions of the New Jersey Uniform Construction Code relating to institutions, the rules of the Department and all other applicable provisions of state and local laws, ordinances, rules and regulations.
1.-2. (No change.)

10:19-4.2 Juvenile population capacity
(a) Each detention facility shall be inspected by the Department and, in consultation with the appropriate county administrator of the county facility, assigned a maximum population capacity based on minimum standards established herein.
(b) The population of a detention facility shall not exceed the maximum population capacity as assigned by the Department.
1. The following options may be explored to reduce the population if a detention facility is regularly over the maximum population capacity:
i. In conjunction with the Family Court judge, those juveniles who may be better served in their own homes, foster homes, or designated shelters should be identified and released.
ii. The use of a neighboring county's detention facility is required in situations of overcrowding, in accordance with N.J.S.A. 2A:4A-37.
(c)-(e) (No change.)

10:19-4.3 (No change in text.)

10:19-4.4 Fire protection
(a) Each detention facility shall be in compliance with all appropriate provisions of the New Jersey Uniform Fire Safety Act, including provision for fire suppression, smoke detection, and automatic alarm systems.
(b) Only fire-resistant mattresses, approved by the Department, shall be utilized in juvenile detention facilities.
(c)-(o) (No change.)
Recodify existing 10A:32-4.5 through 4.16 as 10:19-4.5 through 4.16 (No change in text.)

10:19-5.1 Pre-admission procedures
(a) In regard to taking a juvenile into custody, N.J.S.A. 2A:4A-33(a) states: "Any person taking a juvenile into custody shall immediately notify the parents, or the juvenile's guardian, if any, that the juvenile has been taken into custody."
(b) The code further states in N.J.S.A. 2A:4A-34(a): "Where it will not adversely affect the health, safety, or welfare of a juvenile, the juvenile shall be released pending the disposition of a case, if any, to any person or agency provided for in this section upon assurance being received that such person or persons accept responsibility for the juvenile and will bring him before the court as ordered."
(c) The code also states in N.J.S.A. 2A:4A-34(c): "A juvenile charged with delinquency may not be placed or retained in detention under this act prior to disposition, except as otherwise provided by law, unless:
1. Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at juvenile court proceedings or to remain where placed by the court or the court intake service; or
2. The physical safety of persons or property of the community would be seriously threatened if the juvenile were not detained and the juvenile is charged with an offense which, if committed by an adult would constitute a crime; or
3. When the criteria for detention are met and the juvenile is charged with an offense which, if committed by an adult, would constitute a disorderly persons or petty disorderly persons offense, the juvenile may be placed in detention temporarily. Police and court intake personnel shall make all reasonable efforts to locate a parent or guardian to accept custody of the juvenile prior to requesting or approving the juvenile's placement in detention. If, after the initial detention hearing, continued

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detention is necessary, the juvenile shall not be detained in a secure facility but shall be transferred to a shelter or other non-secure placement.

(d) (No change.)

10:19-5.2 Eligibility for admission

(a) Only juveniles charged with delinquency and meeting the criteria for placement in detention as provided for in N.J.S.A. 2A:4A-34(c) (see N.J.A.C. 10:19-5.1, Pre-Admission Procedures) are eligible for admission.

(b) Juveniles alleged to be in a juvenile-family crisis, as defined in N.J.S.A. 2A:4A-22(g), shall not be admitted to any detention facility.

(c)-(f) (No change.)

10:19-5.3 Intake and admission procedures

(a) When it becomes necessary to place a juvenile in detention in accordance with the code's criteria for such placement as noted in N.J.A.C. 10:19-5.1, the following intake and admission procedures must be adhered to:

1. In accordance with R. 5:21-2(b) of the Rules Governing the Courts of the State of New Jersey, "At any time between the filing of the complaint and the disposition, the judge may order the release of the juvenile from detention . . . and fix the terms of such release pursuant to N.J.S.A. 2A:4A-34(d)."

i. The detention facility shall maintain a written record of the efforts made to contact an appropriate adult custodian.

ii. Each detention facility shall have staff trained and authorized to make such contacts with appropriate adult custodians and effectuate release of juveniles to such persons on a 24-hour-per-day basis.

2. Upon admission, the detention staff (preferably a member of the social work staff) shall obtain from the juvenile, the law enforcement officers and the parents (if possible), pertinent factual and identifying information as outlined in N.J.A.C. 10:19-6.1, Intake information.

Recodify 4-9 as 3-8 (No change in text.)

9. If a physician is not present at the time of the admission shower, the nurse or staff worker on duty shall examine the juvenile's body for lice, bruises or abrasions, unusual marks, and symptoms of any communicable diseases. The findings shall be recorded and brought to the attention of the physician as soon as possible.

i. In situations where a juvenile shows evidence of lacerations, bruises, or abrasions and alleges abuse or neglect by a parent, guardian, or relative, a staff member shall immediately contact the appropriate district office of the Division of Youth and Family Services or the emergency and night phone number of DYFS, in accordance with N.J.S.A. 9:6-8.10.

Recodify 11-12 as 10-11 (No change in text.)

SUBCHAPTER 6. RECORDS AND REPORTS

10:19-6.1 Intake information

(a) In accordance with N.J.A.C. 10:19-5.3, Intake and admission procedures, upon admission, the detention staff (preferably a member of the social work staff) shall obtain from the juvenile, the law enforcement officers and the parents (if possible) pertinent factual and identifying information including:

1.-12. (No change.)

Recodify existing 10A:32-6.2 through 6.4 as 10:19-6.2 through 6.4 (No change in text.)

10:19-6.5 Log for the temporary restriction of juveniles

(a) In accordance with the provisions of N.J.A.C. 10:19-7.4, Temporary restriction, whenever a juvenile is removed from the group or ongoing program and temporarily restricted to his or her sleeping room, or an isolation room, the following information shall be recorded in a log maintained for that purpose:

1.-6. (No change.)

SUBCHAPTER 7. CONTROL, DISCIPLINE AND GRIEVANCE PROCEDURE

10:19-7.1 Rules and regulations

(a) As provided for in N.J.A.C. 10:19-5.3, rules and regulations shall be made available to all juveniles.

(b) (No change.)

10:19-7.2 Grievance procedure

(a) Each detention facility shall establish a written grievance procedure for juveniles which shall provide adequate due process safeguards. This grievance procedure shall be made to all juveniles as provided for in N.J.A.C. 10:19-5.3.

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

10:19-7.3 Discipline

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

(c) The following disciplinary measures are prohibited:

1. The use of corporal punishment by any members of the staff. If any staff member is found to have utilized corporal punishment, this action shall constitute grounds for dismissal. In addition, in accordance with N.J.S.A. 9:6-8.10, the incident shall be reported immediately to DYFS.

i.-ii. (No change.)

2.-5. (No change.)

10:19-7.4 Temporary restriction

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

(d) When a juvenile is temporarily restricted to quarters, the following procedures shall apply:

1.-2. (No change.)

3. After the juvenile is temporarily restricted to quarters, his/her name shall be recorded in the "Log for the Temporary Restriction of Juveniles" as provided for in N.J.A.C. 10:19-6.5.

4.-9. (No change.)

Recodify existing 10A:32-8.1 through 8.4 as 10:19-8.1 through 8.4 (No change in text.)

SUBCHAPTER 9. PROGRAM SERVICES

10:19-9.1 Medical

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

(e) In accordance with N.J.A.C. 10:19-6.4, whenever a juvenile is administered medication, it must be recorded in the "Medication Log".

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

Recodify existing 10A:32-9.2 through 10.2 as 10:19-9.2 through 10.2 (No change in text.)

10:19-10.3 Personnel qualifications

Each staff member shall meet the minimum qualifications for his/her position as established by the New Jersey Department of Personnel.

Recodify existing 10A:32-10.4 through 10.8 as 10:19-10.4 through 10.8 (No change in text.)

10:19-11.1 Administrator

(a) (No change.)

(b) Aside from Civil Service qualifications which are required N.J.A.C. 10:19-10.3, Personnel qualifications, the following qualifications are recommended:

1.-2. (No change.)

10:19-11.2 Child care workers

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

(c) Aside from Civil Service qualifications which are required in N.J.A.C. 10:19-10.3, the following qualifications are recommended:

1.-2. (No change.)

10:19-11.3 Social service worker

(a) At least one full-time social service worker, sometimes called a counselor or group worker, shall be employed in each detention facility with an average daily population of fifteen or more juveniles.

(b) (No change.)

(c) The social service worker shall be responsible for implementing the social services program provided for in N.J.A.C. 10:19-9.5(b).

(d) Aside from Civil Service qualifications which are required in N.J.A.C. 10:19-10.3, the following qualifications are recommended:

1.-2. (No change.)

10:19-11.4 Teacher

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

(d) The teacher shall be responsible for implementing the education program provided for in N.J.A.C. 10:19-9.3.

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

Recodify existing 10A:32-11.5 through 11.8 as 10:19-11.5 through 11.8 (No change in text.)

(a)

DIVISION OF FAMILY DEVELOPMENT
Public Assistance Manual
$50.00 Disregarded Child Support Payment
Adopted Amendment: N.J.A.C. 10:81-11.9

Proposed: May 16, 1994 at 26 N.J.R. 1937(a).

Adopted: May 1, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: May 3, 1995 as R.1995 d.271, **without change**.

Authority: N.J.S.A. 44:10-3 and 45 C.F.R. 302.32(i).

Effective Date: June 5, 1995.

Expiration Date: July 25, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

These rules contain standards which are the same as those imposed by Federal law.

Full text of the adoption follows:

10:81-11.9 Responsibilities of the CWA/CSP Unit

(a)-(k) (No change.)

(l) The first $50.00 of child support collected in a month, that is received in the month due, shall be sent to the AFDC family within 15 calendar days of the end of the month in which the support is received.

1. The first $50.00 of the child support payment, as described in paragraph (l) above, is disregarded when determining AFDC eligibility and the amount of the AFDC payment. This $50.00 payment to the family is referred to as the $50.00 disregard payment.

(m) (No change in text.)

(b)

DIVISION OF FAMILY DEVELOPMENT
Families First Program
Adopted New Rules: N.J.A.C. 10:88

Proposed: March 20, 1995 at 27 N.J.R. 1110(a).

Adopted: May 11, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: May 12, 1995 as R.1995 d.294, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3)).

Authority: N.J.S.A. 30:4B-2 and 44:10-5.2, the Food Stamp Act of 1977 as amended (7 U.S.C. Sections 3 and 5), 7 C.F.R. Part 274.12; and the Mickey Leland Memorial Domestic Hunger Relief Act (P.L. 101-624).

Effective Date: June 5, 1995.

Expiration Date: June 5, 2000.

Summary of Public Comments and Agency Responses:

Comments were received from James J. Williams, Director, County of Essex, Department of Citizen Services, Division of Welfare and Clement C. Carney, Deputy Director, Camden County Board of Social Services.

COMMENT: Additional clarification and/or instruction is needed when the local welfare agency (LWA) is required to take action to (1) cancel the aging process if the termination actions are voided (proposed new rule at N.J.A.C. 10:88-4.4), and (2) convert Families First cash benefits into a cash payment when the recipient family moves out of New Jersey (proposed new rule at N.J.A.C. 10:88-5.3(b)). Commenter notes that procedural instructions would not be included at N.J.A.C. 10:88 and, as such, recommends that if warranted, procedural instructions be provided via either a Division of Family Development Program Instruction or Procedural Bulletin.

RESPONSE: Procedural instructions will be provided concerning the aforementioned situations, in a form based on the nature of the instructions. Instructions will be issued via a Division of Family Development procedural instruction, if appropriate, or will be included in the new rules via a proposal and adoption, if that action is required under the Administrative Procedure Act. In its correspondence, the commenter recommends that the procedures be issued via Division of Family Development Program Instruction or Procedural Bulletin.

COMMENT: N.J.A.C. 10:88-3.8(a) should specify that representation is only permitted against Families First insufficient fund transactions which were made with food stamp benefits.

RESPONSE: The Department agrees with the commenter, and for clarification purposes has amended N.J.A.C. 10:88-3.1(f) and 3.8(a) to state that manual transactions which are permitted due to temporary Families First system failure may only be made with a household's Families First food stamp account. The Department notes that the Summary accompanying the proposed rules, in describing N.J.A.C. 10:88-3.8, specifically refers to the Code of Federal Regulations covering Food Stamps and that it can be readily inferred from the Summary description of the rules that the Food Stamp account is the subject of the rule.

COMMENT: It appears that at N.J.A.C. 10:88-3.8 "representation" is permitted only against manual transactions which are limited to $40.00 per day; that is, those transactions identified at N.J.A.C. 10:88-3.1(f).

RESPONSE: The commenter is correct. N.J.A.C. 10:88-3.8(a)1 and 2 specify the only instances whereby representation is allowed.

COMMENT: The proposed new rule should reflect current practice and stipulate that an individual requesting benefit conversion (N.J.A.C. 10:88-5.3) shall visit the LWA in order to convert his or her Families First account into cash or food stamps.

RESPONSE: The Department agrees with the commenter, and has amended the proposed new rule at N.J.A.C. 10:88-5.3 to reflect current practice. At this point in time, when the Families First Program is beginning operations, the Department believes that there is a high degree of risk involved in having a recipient mail his or her Families First card and Personal Identification Number (PIN) to the LWA to perform the conversion. The Department will revisit this issue once Families First expands throughout the State, in order to perform the benefit conversion process as expeditiously as possible, while at the same time reducing the likelihood of fraudulent loss of benefits. The Department notes that, in order to reduce fraudulent loss of benefits, recipients are required in all instances, to come to the office to pick up their cards. (See N.J.A.C. 10:88-2.3(e), 3.5(b) and 6.2.) While not explicitly stated in the proposal, the Department believes that a requirement to come to the office is consistent with other, similar transactions involving requests to change Food Stamp recipient statutes.

Executive Order No. 27 Statement

These rules contain standards which are the same as those imposed by Federal 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]*):

CHAPTER 88
FAMILIES FIRST PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

10:88-1.1 Purpose and Scope

(a) The Families First Program is an alternate method of distributing Aid to Families with Dependent Children (AFDC) cash benefits, Food Stamp Program (FS) benefits, and Deficit Reduction Act (DEFRA) child support bonus payments to eligible households. Families First eliminates the need for the issuance of cash benefit checks and food stamp Authorization to Participate (ATP) documents by the local welfare agencies (LWAs). Families First utilizes a technology called Electronic Benefit Transfer (EBT). In EBT, each payee is issued a magnetic-stripe plastic card which the payee uses to access his or her benefits. This card is called a Families First card.

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(b) Throughout this manual, the AFDC and Food Stamp Programs shall be referred to as "public assistance".

(c) Food stamp benefits are accessible at retailers authorized to accept food stamp coupons by the Food and Consumer Service (FCS) of the United States Department of Agriculture (USDA). Those retailers are equipped with Point of Sale (POS) devices which allow each payee to debit his or her Families First food stamp account by the amount of the food purchase.

(d) Cash benefits are accessible at MAC™ automated teller machines (ATMs), and at other State-approved businesses equipped to conduct Families First transactions.

10:88-1.2 Benefits of Families First

(a) EBT, as applied to public assistance programs, has several benefits.

1. EBT eliminates the need to print checks, ATPs, and food stamp coupons.

2. EBT minimizes fraudulent activities related to the trafficking of food stamps, as well as mail losses.

3. EBT provides for a better accountability in the reconciliation of payments.

4. EBT facilitates the recipient's access to his or her benefits.

5. EBT lessens the stigma associated with the utilization of food stamp coupons.

10:88-1.3 Authority

(a) The operation of a public assistance EBT system is authorized by both Federal regulation, and State statute.

(b) The operation of the Families First Program in New Jersey has been approved by both the USDA, and the United States Department of Health and Human Services (USDHHS).

(c) Section 1729 of the Mickey Leland Memorial Domestic Hunger Relief Act (P.L. 101-624) established regulatory guidelines under which state agencies must operate EBT systems in the Food Stamp Program. That law is reflected in Federal regulations at 7 CFR 274.12 (issued in Federal Register No. 57, Vol. 63, dated April 1, 1992).

(d) The USDHHS Administration for Children and Families (ACF) Transmittal No. ACF-AT-91-28 (issued on September 6, 1991) established guidelines under which a state agency must operate an EBT system with its AFDC Program.

(e) The Families First Program is authorized in New Jersey Statute by N.J.S.A. 44:10-5.2.

10:88-1.4 Mandatory participation

The public assistance recipient receiving benefits from a LWA participating in Families First is required to receive benefits through the Families First Program. A recipient who does not comply with the requirements to receive his or her benefits through the Families First Program will be issued benefits, but will not be able to access them. Accessing benefits requires that the recipient has an active Families First Card.

10:88-1.5 Properties of Families First accounts

(a) Each Families First account has the following properties:

1. If otherwise entitled, each case shall have one account for cash benefits, and one account for food stamp benefits.

2. A Families First account shall be non-interest bearing.

3. The recipient shall not pay any fees or penalties for use of the account, nor shall retailers impose a minimum purchase amount to use a Families First card.

4. Account balances which are not used by a recipient in the month of issuance shall be carried forward into the following month. The accounts shall be accessed periodically, however, in order to avoid account Aging, as described at N.J.A.C. 10:88-4.

5. Account amounts shall include both dollars and cents.

6. A recipient shall not use the account to "borrow" against a future month's benefit.

10:88-1.6 Definitions

The following words and terms, when used in N.J.A.C. 10:88, shall have the following meanings, unless the context clearly indicates otherwise.

"AFDC" (Aid to families with Dependent Children) means the Federal program which provides cash payments to families with children, based on certain eligibility criteria.

"Aging" means the procedure of terminating a household's Families First account, and closing the household's public assistance case, when the household has not accessed the Families First account for at least 45 days.

"ACF" (Administration for Children and Families) means the organization within USDHHS which is directly responsible for the administration of the AFDC Program.

"ATM" (Automated teller machine) means a machine installed by a bank, which reads a financial transaction card and permits the cardholder to make banking transactions.

"ATP" (Authorization to Participate) means the paper document which is provided to eligible food stamp households each month, which those households may negotiate to receive food stamp coupons.

"Business day" means Monday through Friday between 8:30 A.M. and 4:30 P.M., but does not include State and County holidays.

"Contractor" means the organization which has contracted with the State to administer the day-to-day operations of the Families First system.

"EBT" (Electronic Benefit Transfer) means the a system which uses electronic funds transfer and point-of-sale technologies for the payment of benefits.

"Families First", as well as the "Families First Program", means the method by which public assistance benefits are disbursed in New Jersey through utilization of Electronic Benefit Transfer technology.

"FCS" (Food and Consumer Service) means the organization within USDA which is directly responsible for the administration of the Food Stamp Program.

"Help Desk" means the Families First system operation which assists recipients and retailers in the resolution of problems associated with Families First. The Help Desk is accessed via toll-free telephone numbers.

"LWA" (Local Welfare Agency) means the agency within each political jurisdiction in New Jersey which is responsible for determining eligibility for public assistance programs. In most cases, the LWA will be the county welfare agency ("CWA").

"POS device" (Point of Sale device) means an electronic magnetic-card swipe reader generally used to make debit or credit card purchases.

"Representation" means the procedure of collecting repayment of a household's insufficient account balance purchase with the household's subsequent month's food stamp allotment.

"USDA" (United States Department of Agriculture) means the Federal department which is responsible for the Food Stamp Program.

"USDHHS" (United States Department of Health and Human Services) means the Federal department which is responsible for the AFDC Program.

SUBCHAPTER 2. RECIPIENT TRAINING

10:88-2.1 Purpose of recipient training

The purpose of recipient training is to enable recipients to personally perform Families First transactions, and to obtain account balances.

10:88-2.2 Training responsibilities

(a) The LWA which provides benefits to the recipient shall be primarily responsible for training the recipient on EBT card usage and procedures.

(b) During a LWA's initial conversion of its public assistance caseload to the Families First Program, the State's contractor that is administering the Families First Program's automated account network shall conduct recipient training. After caseload conversion, the LWA shall assume full responsibility for Families First recipient training.

(c) EBT training for each payee shall be performed before the recipient is issued a Families First card.

10:88-2.3 Card issuance

(a) At the time that a LWA certifies an individual's eligibility to receive a public assistance benefit, the State's automated casefile and issuance system (Family Assistance Management Information System—

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FAMIS) shall create a Families First account for that individual on the Families First automated account network.

(b) The LWA shall either mail an appointment letter to the recipient, or contact the recipient directly to schedule the training session for Families First.

(c) The payee shall receive training on the following items:

1. What Families First is;

2. The day of the month when benefits shall become available on Families First for the recipient's use;

3. How the card shall be used to obtain food stamp and cash benefits;

4. How to obtain account balances;

5. How to care for the Families First card;

6. Where the card may be used;

7. How to maintain the security of the recipient's Personal Identification Number (PIN); and

8. How to contact the Families First Help Desk via a toll-free telephone number if there is any problem.

(d) Each payee shall be required to select a four-digit PIN. The PIN serves as the payee's electronic signature when performing Families First transactions. The LWA shall emphasize that the payee needs to maintain the security of the PIN.

(e) In no event shall Families First cards be mailed to payees.

SUBCHAPTER 3. CARD UTILIZATION

10:88-3.1 Obtaining benefits

(a) In Families First, each household shall receive its public assistance benefits by using its Families First card at a location authorized to perform Families First transactions. The method by which the payee obtains benefits varies, dependent on whether the benefits are cash or food stamps. While public assistance benefits are accessed with one Families First card, food stamp and cash benefits are maintained within separate accounts in the Families First automated system.

(b) Cash benefits shall be obtained at MAC™ ATMs in New Jersey, and at other State-approved businesses and organizations equipped to conduct Families First transactions. In both situations, the payee shall use his or her PIN in order to obtain cash benefits.

(c) Food stamp benefits shall be accessed at food retailers authorized to accept food stamps by the FCS of the USDA. Those retailers are equipped with POS devices which allow each payee to debit his or her Families First FS account by the amount of the food purchase. The payee shall be required to use his or her PIN in order to make a food stamp purchase, unless the retailer's access to validate the transaction is temporarily disrupted. In that case, the retailer shall call the Families First system to obtain an authorization to allow the manual voucher transaction to occur.

(d) Families First cash benefits may be used to purchase food at FCS-authorized retailers who have agreed to accept Families First cash transactions. The amount of cash which can be withdrawn during one transaction, as well as the number of cash withdrawals allowed each month, shall be dependent upon the individual retailer's contract with the State.

(e) Food stamp benefits shall not be converted into cash benefits.

(f) In the event that a retailer cannot access the Families First system to determine whether a household has sufficient funds in the household's Families First account to make a purchase ***with food stamp benefits***, the household shall be allowed to make a $40.00 maximum purchase per day. In the event that the household had insufficient funds in the account to make that purchase, the retailer shall be reimbursed, and the State's Families First contractor will be allowed to represent the transaction against the household (see N.J.A.C. 10:88-3.8).

(g) Families First transactions which are performed at ATMs or POS devices shall generate receipts containing the date and location of the transaction, the amount of the transaction, and any remaining account balance. Households shall retain each receipt for a minimum of a month from the date of the transaction.

10:88-3.2 Authorized representatives and payees

Each recipient household shall be allowed to designate a maximum of two payees to access cash benefits, and two payees to access food stamp benefits. The household may designate the same individual(s) to access both the household's cash and food stamp benefits. A Families First card shall be issued to each payee, each with its own PIN.

10:88-3.3 Staggered issuance

(a) Public assistance which represent a household's normal monthly assistance shall become available from the Families First account during the first five days of the month. The specific date of availability shall be dependent upon the household's case number, and the individual LWA's staggered issuance procedures. During Families First training, each recipient shall be advised of the day of the month in which each month's benefits shall be available.

(b) While staggered issuance is a method to disburse benefits over the first five days in the month, the establishment of AFDC and food stamp eligibility shall continue to be based upon a calendar month.

10:88-3.4 Non-traditional food retailers

Food stamp recipients shall be able to utilize their Families First card at authorized retailers who are not equipped with POS devices. These types of transactions shall be performed by having the recipient sign a manual debit voucher for the amount of the purchase, which authorizes the retailer to submit the voucher for payment to the Families First Program. The recipient shall receive a copy of the voucher for the recipient's records.

10:88-3.5 Authorized institutions

(a) Drug or alcoholic treatment centers, shelters for battered women, group living arrangements, and non-profit homeless feeding sites that are authorized by USDA to accept food stamps shall be provided with a POS device. Each food stamp household qualified under N.J.A.C. 10:87-3.12 shall be issued its own Families First card that shall be used to purchase meals from the meal provider, with drug or alcoholic treatment centers and group living arrangements acting as authorized representatives.

(b) When a household leaves an authorized institution which acted as an authorized representative, the facility shall immediately notify the LWA. The LWA shall then immediately inactivate the Families First card. The household shall visit the LWA to have any remaining benefits restored, including the issuance and training on the use of a Families First card if the household is still residing in a Families First jurisdiction.

10:88-3.6 Communal dining facilities

Recipients qualified under N.J.A.C. 10:87-3.12 may utilize their Families First food stamp benefits to purchase meals at communal dining facilities. These transactions are performed by having the recipient sign a debit voucher which authorizes the communal dining facility to submit the voucher for payment to the Families First Program. The recipient shall receive a copy of the voucher for the recipient's records.

10:88-3.7 Meals-on-Wheels

Recipients qualified under N.J.A.C. 10:87-3.12 may utilize their Families First food stamp benefits to purchase meals from Meals-on-Wheels. These transactions are performed by having the recipient sign a debit voucher which authorizes Meals-on-Wheels to submit the voucher for payment to the Families First Program. The recipient shall receive a copy of the voucher for the recipient's records.

10:88-3.8 Representation

(a) When there are insufficient funds in the ***food stamp*** EBT account to cover a manual Families First transaction, representation of the manual voucher amount shall be permitted under the following circumstances:

1. The manual transaction occurred because the Families First system was inaccessible, and the retailer obtained authorization for the transaction; or

2. The manual transaction occurred because telephone lines were down.

(b) Representation of manual vouchers is not to be permitted when the Families First card or POS device fails, and telephone lines are operational. Manual transactions shall not be utilized to extend credit to a household when the household's account balance is insufficient to cover the planned purchase.

(c) The State shall debit the benefit allotment of a household during the first month following the insufficient funds transaction in the amount of $50.00. If the household's monthly allotment is less than $50.00, the

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State shall debit the account for $10.00. For each subsequent month, the deduction from the monthly allotment shall be the greater of $10.00 and 10 percent until the representation is completely repaid.

(d) The State, the State's Families First system contractor, and the LWAs shall identify those households which are subject to representation. The LWAs shall establish the validity of each representation within their jurisdiction, and shall report this to the State's Families First system contractor. The State's Families First system contractor shall then issue representation notices to those households who will be subject to representation, and shall then perform the representation with the next month's benefits.

(e) The State shall ensure that retailers provide notice to households at the time of the manual transaction that representation may occur if there are insufficient benefits in the account to cover the transaction. The statement shall be printed on the paper voucher or on a separate sheet of paper. The State shall also provide notice to the household prior to the month when a benefit allotment is reduced when a representation is necessary. Notice shall be provided to the household for each insufficient transaction that is to be represented in a future month. The notice shall be provided prior to the month it occurs and shall state the amount of the reduction in the benefit allotment.

SUBCHAPTER 4. INACTIVE ACCOUNTS (AGING)

10:88-4.1 Overview

The Families First system shall terminate those Families First cash and food stamp accounts, as well as close AFDC and/or food stamp cases on FAMIS, which have not been accessed for at least 45 days. This process is called Aging. The Aging process is generally the same for AFDC and food stamp cases, with certain specific differences.

10:88-4.2 Aging of food stamp cases

(a) On or about the 13th day of each month, the Families First system shall identify those food stamp Families First accounts that have not been accessed by payees for more than one month.

1. The FSP-907A F-1 or F-1S (English and Spanish versions, respectively), Notices of Expiration of Certification Period, shall be mailed, forewarning the payee that his or her food stamp case shall have its certification period shortened unless the payee either uses his or her Families First food stamp benefits, or contacts the LWA to explain why the household has not used those benefits. The FSP-907A F-1/F-1S shall be received by the household at least 30 days prior to the end of the certification period.

2. If, after two consecutive months, the payee has not accessed his or her food stamp benefits, the LWA shall send a F-2 or F-2S (English and Spanish versions, respectively) final warning notice to the payee, reminding the payee that all Families First food stamp benefits shall be cancelled unless the payee either contacts the LWA, or accesses the Families First FS benefits.

3. The food stamp case shall be closed effective the first day of the following month.

4. Food stamp benefits shall be Aged from the Families First system on or about the 13th day after the food stamp certification period expires.

10:88-4.3 Aging of AFDC cases

(a) On or about the 13th day of each month, the Families First system shall identify those AFDC Families First accounts that have not been accessed by payees for more than one month.

1. A F-3 or F-3S (English and Spanish versions, respectively) warning notice shall be mailed, forewarning the payee that his or her AFDC case shall close unless the payee uses his or her Families First AFDC benefits.

2. If, after two consecutive months, the payee has not accessed his or her AFDC benefits, LWA shall issue a PA-15/PA-15S Adverse Action Notice to the payee, advising that all Families First AFDC benefits shall be removed if the payee does not access the Families First AFDC benefits.

3. The AFDC case shall be closed effective the first day of the following month.

4. The payee shall not be entitled to receive any Aged AFDC benefits once the AFDC case is closed due to Aging, which occurs on or about the 13th day after the AFDC case is closed.

10:88-4.4 Cancellation of the Aging process

Prior to the effective date of FAMIS case closure, if a payee contacts the LWA after receiving one of the notices at N.J.A.C. 10:88-4.2 or 4.3, the worker shall determine whether or not the closing of the public assistance case, as well as the Families First account, should be voided. If the termination actions are voided, the LWA shall take action to cancel the Aging process.

10:88-4.5 Obtaining Aged food stamp benefits

The household shall be entitled to receive Aged food stamp benefits for up to one year from the date the benefits were Aged (see N.J.A.C. 10:88-4.2(a)4). If the payee does not request replacement of those food stamp benefits within one year after the benefits were Aged, the benefits shall be expunged and reported back to FCS.

SUBCHAPTER 5. BENEFIT CONVERSION

10:88-5.1 Overview

Food stamp benefit conversion shall be limited to situations where the household is moving out of a county participating in the Families First Program to a non-Families First jurisdiction.

10:88-5.2 Moving into EBT jurisdiction

If a food stamp household moves from a non-Families First jurisdiction to a Families First jurisdiction, the household shall use any remaining food stamp coupons which were received in the previous jurisdiction at retailers in the Families First county.

10:88-5.3 Moving out *[Of]* ***of*** EBT jurisdiction

(a) When a household moves out of a jurisdiction participating in Families First, the household's food stamp benefits shall be converted into benefits which shall be negotiable in the household's new place of residence.

(b) Cash benefits remaining in Families First accounts shall be accessible throughout New Jersey via MACtm ATMs, and thus will not require conversion to cash unless the family moves out-of-state. If the family is moving out of New Jersey, the LWA shall convert the family's Families First cash account balance into a cash payment.

(c) Within one business day of the date of notification to the LWA that a household is moving from a Families First county, the LWA shall cancel the household's Families First account using the client's Families First card, and convert any balance in the household's Families First food stamp account to an ATP, provided that the LWA maintains a coupon inventory on site. For LWAs which do not maintain coupon inventories on location, the conversion timeframe shall be three business days. ***The recipient shall visit the LWA in order to provide the LWA with his or her PIN and Families First card.***

(d) CWAs shall ensure that a recipient has access to a location which shall transact the ATP into food stamp coupons.

10:88-5.4 Conversion restrictions

The payee shall not have the option of converting its Families First food stamp account to paper-based benefits merely to accommodate the household's convenience.

SUBCHAPTER 6. REPLACEMENT OF BENEFITS AND CARDS

10:88-6.1 Replacement of benefits

Cash and food stamp benefits shall not be replaced once they are posted to a household's Families First account. Benefits shall be replaced, however, if an ATM does not give the correct amount of cash, or a retailer overcharges the payee.

10:88-6.2 Replacement of lost/stolen EBT cards

Replacement Families First cards shall be made available no later than two business days from the date that the loss is reported to the LWA. Since payees, as part of the card replacement procedure, must visit the LWA's Card Issuance Site (CIS) in order to select a new PIN, it is critical that payees be referred to CIS in an expeditious manner.

10:88-6.3 Forgotten PINs

Payees who forget their PINs shall not be required to obtain replacement cards, provided they possess their original cards. Such payees, however, shall be referred to the CIS within two business days to select new PINs.

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SUBCHAPTER 7. REGULATION E DEMONSTRATION (HUDSON COUNTY ONLY)

10:88-7.1 Overview

The New Jersey Department of Human Services has entered into a cooperative agreement with the USDA and USDHHS whereby the Department of Agriculture shall conduct a demonstration program in Hudson County, New Jersey to evaluate the replacement of Families First public assistance benefits under the conditions of Regulation E (12 CFR 205) of the United States Federal Reserve System.

10:88-7.2 Demonstration timeframes

The Regulation E demonstration project shall be effective from March 1, 1995 to February 29, 1996. It is applicable to all Hudson County public assistance recipients who have a Families First account.

10:88-7.3 Purpose and scope

The Federal Reserve System's Board of Governors has determined that the protections which are afforded to individuals who possess and utilize electronic debit cards under the Federal Reserve System's Regulation E (Electronic Funds Transfer) are equally applicable to individuals who use EBT cards to access their public assistance benefits. For this demonstration only, the rules in this Subchapter supersede those which govern replacement of Families First benefits under N.J.A.C. 10:88-6.1. The procedures shall vary dependent upon whether the lost benefit is claimed to have occurred at a POS device (primarily food stamp, with some cash benefit transactions), or an ATM (cash benefits only).

10:88-7.4 Training

The Hudson County Division of Welfare (CWA) shall provide each recipient with important information about the care, use, and protection of the Families First card, including a specific Disclosure which outlines the recipient's liability for unauthorized transactions, as well as procedures for reporting unauthorized transactions.

10:88-7.5 Disclosure

Each household shall receive the Disclosure (see Appendix incorporated herein by reference) which identifies the household's rights and responsibilities related to the Families First Program, and unauthorized Families First transactions, including the applicable liabilities cited at N.J.A.C. 10:88-7.7.

10:88-7.6 Account statement

The recipient may request, at no cost and at any time, a statement which details the recipient's Families First account balances and transactions for the preceding 60 days. The recipient may obtain this statement by contacting the CWA or the Families First Help Desk.

10:88-7.7 Unauthorized transactions

A Families First transaction is unauthorized when it is conducted by a third party without "actual authority" from the recipient. This includes instances where the recipient was forced against the household's will to perform a transaction, or situations where a recipient relinquishes a Families First card while under duress. Unauthorized transactions do not include instances of fraud where the recipient acts alone or in concert with others. If a recipient is unwilling to prosecute an alleged offender, this and other factors may weigh against the recipient, causing the CWA to conclude that the transaction in question was actually authorized.

10:88-7.8 Recipient liability

(a) N.J.A.C. 10:88-7.8(b) through (f) establish the criteria for determining a recipient's liability for unauthorized Families First transactions committed by a third party using the recipient's valid card and PIN, but without permission from the recipient.

(b) When a recipient becomes aware that his or her Families First card is lost or stolen, or that an unauthorized transaction has occurred, the recipient is obligated to notify the Hudson CWA Investigative Unit or the Families First Help Desk immediately in order to limit liability.

1. If the recipient reports the lost/stolen Families First card within two business days of the date of the unauthorized transaction, liability is limited to actual transaction(s), but no more than $50.00. In other words, there is a $50.00 maximum liability in this situation.

2. If the recipient reports the loss or theft of his or her Families First card more than two, but less than 61 business days after the unauthorized transaction, the liability is limited to actual transaction(s), not exceeding $50.00 for the first two days and an additional $450.00 liability for errors reported anytime between day three through 60 after discovery. The total liability can be no greater than $500.00.

3. If the recipient reports the lost/stolen Families First card more than 60 business days of the date of the unauthorized transaction, liability is unlimited.

(c) If the recipient is unaware that his or her Families First card is lost or stolen or that an unauthorized transaction has occurred, and discovers an error from a terminal receipt, telephone inquiry or account statement, the recipient's liability is as follows:

1. Up to $50.00 within the first 60 days after transmittal of the account statement where the unauthorized transaction would have been apparent to the recipient. The amount of liability is limited to the lesser of actual transactions or $50.00 (within 60 days).

2. Liability is unlimited for transactions after the 60th day.

(d) Recipient liability can be limited ($50.00 or $500.00) or unlimited, or it can be both limited and unlimited. The type and amount of liability depend on factors related to discovery, error notification, and whether recipient had knowledge that his or her Families First card was lost or stolen.

(e) The 60-day time period shall be extended due to extenuating circumstances like illness or family emergencies.

(f) The recipient is not liable for system or misdispense-type errors.

10:88-7.9 Reporting of account losses

Recipients shall report any lost/stolen Families First card, or discrepancy in the recipient's Families First account to the Families First Help Desk as soon as the recipient becomes aware of it. The recipient shall ask for, and receive, a claim number which provides proof that the recipient contacted the Help Desk.

10:88-7.10 Methods of reporting loss

(a) Notification by the recipient should be provided by telephone to the Families First Help Desk. As an alternative, notification may be provided in person, by telephone, or in writing to the Hudson CWA Investigative Unit. However, for instances involving unauthorized use, the recipient is required to submit its claim in writing, and must complete a signed affidavit at the Hudson CWA within 10 business days of the loss. The written claim shall include the following:

1. Name, account or case number;

2. Belief that an error has occurred and the reason(s) for that belief, including date of discovery;

3. If a Families First card was lost or stolen, date this discovery took place;

4. Type(s) and amount(s) of error transaction;

5. Pertinent documentation to support the claim; and

6. The recipient's signature.

10:88-7.11 Recipient cooperation

(a) The recipient is required to cooperate with the CWA's investigation of the account loss. This includes submission of a written affidavit explaining the loss, cooperation in filing a police report related to the loss, and cooperation in other activities relevant to the investigation.

(b) When necessary, CWAs shall provide assistance to those recipients who may have difficulty in supplying either the written notice of loss, the affidavit, or the police report.

10:88-7.12 CWA action on reported loss

The CWA's investigation time shall begin immediately upon the receipt of a claim of loss. Any claim of error which is reported by the recipient shall be investigated.

10:88-7.13 Action on claims from ATMs

(a) The CWA shall take the following action on claims arising from lost benefits from ATMs.

1. If the recipient reports a claim involving lost or stolen benefits orally, the CWA shall require a written verification of the claim, including a signed affidavit, within 10 working days after the oral claim is made. The filing of a police report shall also be required, but shall not otherwise impact the 10 business day initial investigation timeframe cited at (a)2 below. If the recipient fails to provide written verification within

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10 business days of the date that the original request was filed, then the provisional credit may not be granted.

2. The CWA shall initiate, and attempt to complete, its investigation within 10 business days of the date that the recipient files his or her claim, which includes transmitting written investigation findings within 10 days.

3. During the initial investigation, the CWA shall review Families First transaction data, as well as other information, in order to ascertain whether consistency exists between the client's oral and/or written statements of loss, and Families First transaction records. If the initial investigation concludes that the recipient was aware that the Families First transaction was indeed authorized, then the CWA may deny the claim at that point. Written notification of claim denial shall be mailed to the recipient within three business days of the date of claim denial.

4. If additional time beyond the 10 days is needed to investigate the Families First claim, the recipient's cash account may be provisionally credited with the amount of the reported loss. After the initial 10 business days, the investigation shall not exceed 45 days.

i. The $50.00 or $500.00 minimum liability amount shall be deducted from the provisional credit if the claim involves a transaction by an unauthorized individual, as described at N.J.A.C. 10:88-7.7.

ii. Within two business days of posting a provisional credit to the recipient's account, written notification must be transmitted to the recipient advising of the provisional credit, and the ongoing investigation.

5. If it is determined that an error has occurred, the CWA shall take necessary corrective action within one business day, including sending the findings to the household.

10:88-7.14 Action on claims from POS devices

(a) The CWA shall take the following action on claims arising from lost benefits from POS devices.

1. If the recipient reports a claim involving lost or stolen benefits orally, the CWA shall request a written verification of the claim, including a signed affidavit, within 10 working days after the oral claim is made. The filing of a police report shall also be required, but shall not otherwise impact the 10 business day initial investigation timeframe cited at (a)2 below. If the recipient fails to provide written verification within 10 business days of the date that the request for a written claim is mailed to the recipient, then the claim shall be dismissed.

2. The CWA shall initiate, and attempt to complete, its investigation within 20 business days of the date that the recipient provides a signed affidavit, which includes transmitting written investigation findings within 20 days.

3. During the investigation, the CWA shall review Families First transaction data, as well as other information, in order to ascertain whether consistency exists between the client's oral and/or written statements of loss and Families First transaction records. If the investigation concludes that the recipient was aware that the Families First transaction was indeed authorized, then the CWA may deny the claim at that point. Written notification of claim denial shall be mailed to the recipient within three business days of the date of claim denial.

4. If additional time beyond the 20 days is needed to investigate the Families First claim, the recipient's cash or food stamp account, as appropriate, may be provisionally credited with the amount of the reported loss. After the initial 20 business days, the investigation shall not exceed 90 days.

i. The $50.00 or $500.00 minimum liability amount shall be deducted from the provisional credit if the claim involves a transaction by an unauthorized individual, as described at N.J.A.C. 10:88-7.7.

ii. Within two business days of posting a provisional credit to the recipient's account, written notification must be transmitted to the recipient advising of the provisional credit, and the ongoing investigation.

5. If it is determined that an error has occurred, it shall be corrected within one business day, including sending findings to the household.

10:88-7.15 Fair hearing on investigation finding

(a) A recipient who does not agree with a final claim loss investigation decision is entitled to request a fair hearing on the matter. All CWA correspondence with the recipient regarding the investigation decision shall describe how the recipient may request a fair hearing. This information shall be consistent with that used for fair hearings in the AFDC and Food Stamp Programs (N.J.A.C. 10:81-6 and N.J.A.C. 10:87-8, respectively). The fair hearing shall be requested within 10 days of the mailing date of the CWA's investigation decision.

(b) A recipient need not submit a written request to cancel a fair hearing involving a claim investigation finding. An oral request is satisfactory.

10:88-7.16 Provisional credits

While a claim error resolution is in progress, the recipient has full use of funds which are provisionally credited in accordance with N.J.A.C. 10:88-7.13(a)4 and 7.14(a)4. However, if the claim is subsequently denied, the recipient's account shall be subject to either AFDC or food stamp overissuance recoupment procedures (N.J.A.C. 10:82-2.19(a), or N.J.A.C. 10:87-11.26 and 11.29, respectively).

10:88-7.17 Recipient restrictions

(a) If a household files more than one loss claim involving ATM facilities within a 12-month period, the recipient's access to cash benefits shall be limited to POS devices which require personal contact, and those claims indicate that the household is having difficulty in transacting benefits, then the LWA shall determine whether designation of a representative payee is appropriate.

(b) If a loss claim is filed, and those claims indicate that the household is having difficulty in transacting benefits, then the CWA shall determine whether designation of a representative payee is appropriate.

(c) If a household's difficulty with performing Families First transactions places the household "at risk" because eviction or utility shut-off are imminent, the CWA shall have housing and other shelter costs paid through Restricted Payments (N.J.A.C. 10:81-4.5(c)).

(d) Households subject to restrictions shall received 21-day advance notice before being placed on such restrictions.

SUBCHAPTER 8. FISCAL PROCEDURES

10:88-8.1 Food stamp card replacement fees

Collected Families First card replacement fees are to be reported as a refund to the Administrative Account, specifically the Food Stamp Program.

10:88-8.2 Food stamp claims

(a) Households shall be allowed to repay recipient claims using Families First benefits as they are currently able to do with paper food coupons.

(b) Any payments made using Families First benefits should be reported on line 15 of the FNS-209, Status of Claims Against Households report.

(c) CWAs shall ensure that involuntary claims repayments are not deducted from Families First accounts.

(d) The CWA must secure and retain an FNS-135, Affidavit of Return or Exchange of Food Coupons, signed by the household.

(e) CWAs may offset Families First benefits which are about to be expunged against outstanding claims if the CWA is able to secure the household's written permission prior to expunging the benefits from the account. This collection would then be reported on line 15 of the FNS-209 report.

10:88-8.3 Aged Families First cash benefits

Aged Families First cash benefits shall be credited on the CWA's fiscal reports.

APPENDIX
HUDSON COUNTY FAMILIES FIRST DISCLOSURE

INTRODUCTION:

You live in an area that no longer delivers paper welfare checks or food stamp coupons. Instead, your monthly benefits are available electronically using a special plastic card that looks like a regular bank or credit card, and a secret code number called a PIN (Personal Identification Number). Plans are underway to begin using this type of system for delivering government benefits throughout the country. The general name for the type of benefit delivery system your area is using is Families First.

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Using your card and PIN allows you to pay for food purchases in grocery stores without having to use food stamp coupons or pay cash, as long as you have funds remaining in your food stamp account. You can also use your card to pay for purchases or make withdrawals from your AFDC allowance using Point of Sale (POS) devices in certain stores or Automated Teller Machines (ATMs) operated by banks.

Additionally, your county has been chosen as a site to test out a system that provides you with some important new rights that were not available before.

This Families First Disclosure shall:

Provide you with information which explains these rights to you;

Discuss your responsibility to report problems or errors; and

Discuss lost benefits and how much certain kinds of losses might cost you.

In addition to this disclosure, you shall receive separate information which explains about how to use ATMs and POS terminals and shall provide you with safety and security measures when using the Families First system. All the information you receive is important. You should take the necessary time to read it and keep it in a safe place so that you can refer back to it later if a problem comes up and you don't remember what you are supposed to do.

The rights and responsibilities outlined in this Disclosure are effective in Hudson County March 1, 1995 through February 29, 1996.

DISCLOSURE CONTENTS:

This Disclosure contains important information about the care, use and protection of your Families First card. In particular, this Disclosure discusses:

PROTECTING YOUR FAMILIES FIRST CARD AND PIN:

Caring of your Families First card
Keeping your PIN a secret
Giving your card and PIN to others
Withdrawing your permission to use your card and PIN
Reporting a lost or stolen card immediately

YOUR RIGHTS IN THE FAMILIES FIRST SYSTEM:

Choosing your own PIN
Finding out your account balance
Requesting a written transaction history
Obtaining benefits without being charged a fee
Using the card without being charged/certain cash-back limitations
Using the card throughout the month
Obtaining a replacement card or PIN
Moving out of an Families First project area

REPORTING A LOST OR STOLEN CARD OR PIN:

When your card is lost or stolen
Reporting by phone
Reporting in writing
Getting a claim number
Filing a police report, assisting with prosecution

REPORTING OTHER KINDS OF ERRORS:

Problems with your Families First account
Reporting errors by phone
Reporting errors in writing

ACTIONS WE SHALL TAKE WHEN YOU REPORT A LOSS OR FILE A CLAIM:

Errors which are our fault
ATM errors/Temporary Credit
POS errors/Temporary Credit
Letting you know if your claim is denied
Letting you know if your claim is approved
Getting additional information about our procedures

WHEN WE MIGHT DISCLOSE INFORMATION ABOUT YOUR FAMILIES FIRST ACCOUNT:

Circumstances where we may provide information about your account to others

Throughout this disclosure we will often refer to "business day". When you see this, it means Monday through Friday between 8:30 A.M. and 4:30 P.M. but does not include State and County holidays.

PROTECTING YOUR FAMILIES FIRST CARD AND PIN

CARE OF YOUR FAMILIES FIRST CARD:

Always keep your card in a safe place. Do not let it come into contact with other bank or credit cards, electronic equipment like TV's or microwaves, or direct sunlight. Any of these things can damage the black magnetic strip on the back of the card so that it will no longer be "readable" by the POS or ATM device. If the magnetic strip does become damaged, you will need to request a new card.

KEEP YOUR PIN A SECRET:

Your Families First card shall only work with the personal identification number (PIN) that you chose. Your PIN is your own secret code and helps to prevent anyone else from getting your benefits, even if your Families First card is lost or stolen. Do not give your PIN to anyone, including your caseworker, a store employee, a bank employee, anyone you call to report a problem with your Families First account, or a family member (unless you want that person to be able to spend your benefits).

Try to memorize your PIN so that you won't need to write it down anywhere. If you do have to write it down, keep your card and PIN in separate locations. Do not write your PIN on the Families First card, or on the protective sleeve you keep the card in, or on anything else you keep near your card.

GIVING YOUR CARD AND PIN TO ANOTHER PERSON, FRIEND OR RELATIVE:

If you willingly give someone else both your card and your PIN and they take some or all of your benefits without your permission, we shall not replace any of the benefits that were taken. This means, for example, that if you provide your card and PIN to a neighbor to purchase some groceries for you and the neighbor not only buys the items you requested but also pays for his or her own purchases with your card, we shall not replace the benefits you lost because of your neighbor's action.

WITHDRAWING YOUR PERMISSION TO USE YOUR CARD AND PIN:

If there is someone in your household who moves or if you no longer want someone to be able to use your card, you should call the Customer Service Help Desk immediately at 1-800-264-6589. Once you call, we will place a hold on your Families First account so that no one else can withdraw your benefits. We will also make arrangements to get you a new PIN within two business days so you will be able to get your benefits. If we fail to act when you tell us that a friend or relative no longer has permission to use your card and, if benefits are taken without your permission, we will replace any benefits that are lost.

REPORTING A LOST OR STOLEN CARD IMMEDIATELY:

Even though your Families First card cannot be used without your PIN, you should report a lost or stolen card as soon as you discover the loss. To report that your card is missing, call the Customer Service Help Desk immediately at 1-800-264-6589. Only by calling this number can we place an immediate hold on your account so that no one else can try to get to your benefits.

YOUR RIGHTS IN THE FAMILIES FIRST SYSTEM

YOU HAVE THE RIGHT TO CHOOSE YOUR OWN PIN:

Your PIN is your own secret code for using your Families First card. You have the right to pick out whatever set of four numbers you want to have as your PIN.

YOU HAVE THE RIGHT TO FIND OUT YOUR ACCOUNT BALANCE:

If you want to find out how many benefits are left in your Families First account (your "account balance"), you can call the Balance Hotline at 1-800-997-3333. Your receipt, which is provided after you conduct a transaction, may also provide you with a balance. See your training material for an explanation on other ways to obtain your balance.

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YOU HAVE THE RIGHT TO RECEIVE A RECEIPT WHENEVER YOU USE YOUR FAMILIES FIRST CARD:

You should receive a printed receipt each time you use your Families First card at an ATM or a POS machine. The receipt should include the following information:

The date of the transaction;

Some identification of where the transaction took place; and

The type and amount of the transaction.

The receipt may also show the balance left in your account after the transaction.

Keep your receipts for at least a month. This will help you to keep track of your remaining balance and may also tell you if an error has occurred.

YOU HAVE THE RIGHT TO REQUEST A WRITTEN TRANSACTION HISTORY:

If you need a more complete record about your Families First account, or if you think there may be an error, you can call the Customer Service Help Desk number (1-800-264-6589) and ask for a transaction history for your account. This is a written record of all the activity on your Families First account for the last 60 days. The transaction history will show the dates and amounts of each deposit we made into your account during this period. It will also provide a complete record of each withdrawal, including the date, amount, type of transaction (cash or food stamps), and a location of where each transaction was made.

YOU HAVE THE RIGHT TO USE THE FAMILIES FIRST SYSTEM WITHOUT BEING CHARGED ANY FEES/CERTAIN CASH-BACK LIMITATIONS AT POS:

This means you can use your card to get cash from any participating ATM or POS device for free. You can also use your card at a POS machine to pay for food purchases in a participating grocery store. If you want to make a cash withdrawal using a POS device, the store has to pay you the full amount you request in cash and you cannot be required to take a store credit or coupon for part of the amount you want. If a store violates these rights, you should contact us at 1-800-264-6589 so that we can take appropriate steps to correct the problem.

Stores are permitted to set limits on whether they will let you make cash withdrawals using their POS device. They can also limit the amount of cash they will let you withdraw at one time and the number of cash withdrawals they will let you make in a month. You should have received a list of the stores in your area that allow cash withdrawals and any limits that apply.

YOU HAVE THE RIGHT TO USE YOUR FAMILIES FIRST CARD THROUGHOUT THE MONTH:

You have the right to use your Families First card as many times as you want to get cash from an ATM or a POS device or to pay for food purchases using your card. This means that you do not have to spend all your food stamp benefits or withdraw all your cash benefits at the beginning of the month. You can decide when to withdraw your benefits and you can spread your withdrawals out over the whole month. You can even choose to leave some of your benefits in your account from month to month.

When using your food stamp benefits, stores cannot require you to purchase any minimum amount of items in order to use your Families First card. They also cannot limit the number of food stamp purchases you can make in a month with your Families First card. But, you cannot make a purchase which is greater than your available food stamp balance.

YOU HAVE THE RIGHT TO GET A REPLACEMENT CARD OR PIN WITHIN TWO BUSINESS DAYS:

If you report to us that your card has been lost, stolen, or damaged, we will place a hold on your account so that no one else can withdraw your benefits.

In addition, we will refer you to the card issuance site so you can obtain a new card within two business days of receiving your report.

If your card is lost or stolen we will not charge you a fee to replace it.

If you report to us that you cannot remember your PIN or need to change your PIN for any reason, we will explain how to choose a new PIN.

YOU HAVE THE RIGHT TO CHANGE YOUR FOOD STAMP FAMILIES FIRST BENEFITS TO FOOD STAMP COUPONS IF YOU ARE LEAVING THE FAMILIES FIRST PROJECT AREA:

If you move out of Hudson County into a county which does not now use the Families First SYSTEM to provide benefits, you must contact your Hudson County caseworker to request that any remaining Food Stamp benefits be changed to the paper system. This will allow you to use your Food Stamp benefits in the county where you will be living. Your Families First Food Stamp account will be closed and your Food Stamp benefits changed within three days of the date you notified your caseworker. Your Families First AFDC account will not be changed since you can use ATMs throughout New Jersey to get your benefits.

REPORTING A LOST OR STOLEN CARD OR PIN:

If your Families First card is lost or stolen, you should report the loss or theft immediately by calling the Customer Service Help Desk at 1-800-264-6589 so that we can cancel your card. Contacting us quickly can reduce the chances of someone using your card and getting to your benefits. The Help Desk is open seven days a week, 24 hours a day. Make sure you report a lost or stolen card right away.

If we do cancel your card, we will tell you how to get a replacement card within two business days. If any benefits are taken from your account after you have reported the loss or theft of your card to us, we will replace them.

WHEN YOU KNOW THAT YOUR CARD OR PIN IS LOST OR STOLEN:

If you report the loss or theft of your card or PIN within two business days, we may replace all the benefits taken from your account before you reported the problem, except for the first $50.00. This means you would not lose more than $50.00, even if more than $50.00 in benefits were taken from your Families First account. It also means that if the loss is less than $50.00, we will not replace any of the lost benefits.

If you wait more than two business days to tell us about the loss or theft, and we can show you could have stopped someone from using your Card and/or PIN if you had notified us, you could lose up to a maximum of $500.00 in benefits. This means that if all your benefits were stolen before you reported the problem to us, we would not replace the first $500.00 lost.

Remember, it is very important to report the loss or theft of your Card or PIN right away. If you wait and tell us after 60 days, no benefits will be replaced.

WHEN YOU BELIEVE YOUR CARD/PIN IS SAFE:

If it seems that your card/PIN is safe, but you discover that benefits are missing from your account when you check your balance, look at a transaction receipt, or review a written account history, you must report the loss to us within 60 days of discovering it. If you do not report the error to us within 60 days, and we can show that you should have been aware of the error, we may not replace any of the missing benefits.

If you report the loss to us within 60 days, we may replace:

All of the benefits that you lost, or

All benefits except for the first $50.00 if we can show that your card and/or your PIN was used and your permission has never been granted. If you are liable for the first $50.00, it means that if the loss is less than $50.00, we will not replace any of the lost benefits.

If you report the error within 60 days and we find that the use of your card and/or your PIN was involved without your knowledge and your permission has never been granted, you may be asked to file a police report and assist us in prosecuting the person who took your benefits. Failing to file a police report and/or assist with the prosecution of the person who took your benefits, could affect your claim.

The time periods for reporting errors may be extended if you need more time due to illness or some other emergency.

REPORTING A LOST OR STOLEN CARD OR STOLEN BENEFITS BY PHONE:

Call the Customer Service Help Desk at 1-800-264-6589. The Help Desk is open seven days a week, 24 hours a day. When you report errors by telephone, you will receive a claim number and will be advised that you must provide a written claim to us within 10 business days. You will be asked to report to the Investigative Unit, located at the Hudson County

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Division of Welfare, 100 Newkirk Street, Room 205, Jersey City where an Investigator will obtain some information from you and assist you with the written statement.

REPORTING LOST OR STOLEN CARD OR LOST BENEFITS IN WRITING:

The Customer Service Help Desk is the easiest and fastest way to contact us and protect any remaining benefits in your account. However, if you are unable to call the Help Desk, you must still provide us with a written statement within 10 business days. The statement must be mailed to:

Investigative Unit
Hudson County Division of Welfare
Newkirk Street
Room 205
Jersey City, New Jersey 07306

Your written report should include:

Your name, address and case number;

Why you think there is an error and if you think it is because of lost or stolen benefits;

When (the date) you found out about the error and how you found out about it (by receipt, balance inquiry, lost card, and so forth);

Where did the problem occur (at an ATM or POS); and

How many benefits you think are missing from your account or if you need more information to figure out how many benefits are missing.

You should ask us for help in preparing a written statement if you need assistance. If you need to speak with someone in the Investigative Unit, the telephone number is (201) 420-3219.

REMEMBER: A LOST OR STOLEN CARD AND/OR LOST BENEFITS MUST BE REPORTED TO US WITHIN 60 DAYS FROM THE DATE YOU DISCOVER THE LOST OR STOLEN CARD AND/OR LOST BENEFITS.

But remember, if your card needs to be cancelled, please call the Customer Service Help Desk immediately at 1-800-264-6589 and if necessary, follow any additional instructions to have your card cancelled.

GETTING A CLAIM NUMBER:

When you report a lost or stolen card/benefits to a Customer Service Help Desk operator or you provide your report in person, be sure that we provide you with a claim number. Getting a claim number is very important as this is your proof that you filed a report. For greater protection, it is a good idea to ask for and keep our operator's name when you file your claim.

FILING A POLICE REPORT AND ASSISTING WITH PROSECUTION:

If your benefits have been stolen, you will be expected to file a police report and help us with the prosecution of the person who took your benefits even if this person happens to be a friend, relative or stranger.

If benefits have been stolen, a written claim must be filed and you will be expected to visit one of the investigators in the Hudson County Investigative Unit in order to complete your claim. The Investigator will assist you in preparing a written statement.

REPORTING OTHER KINDS OF ERRORS

WHAT TO DO IF THERE ARE PROBLEMS WITH YOUR FAMILIES FIRST ACCOUNT:

Problems (also known as errors) can happen for different reasons. For example: After making a purchase, you may later discover that a merchant accidentally overcharged you; or

We could make a mistake and cause you to lose benefits; or

An ATM may not give you the correct amount of cash.

REPORTING ERRORS BY PHONE:

If you determine that an error has been made, call the Customer Service Help Desk at 1-800-264-6589. The Help Desk is open seven days a week, 24 hours a day.

REPORTING ERRORS IN WRITING:

The Customer Service Help Desk is the easiest and fastest way to contact us and protect any remaining benefits in your account. However, if you are unable to call the Help Desk, you must still provide us with a written statement within 10 business days. The statement must be mailed to:

Investigative Unit
Hudson County Division of Welfare
Newkirk Street
Room 205
Jersey City, New Jersey 07306

Your written statement should include:

Your name, address and case number;

Why you think there is an error and if you think it is because of lost or stolen benefits;

When (the date) you found out about the error and how you found out about it (by receipt, balance inquiry, lost card, and so forth);

Where did the problem occur (at an ATM or POS); and

How many benefits you think are missing from your account or if you need more information to figure out how many benefits are missing.

If you need assistance in preparing a written statement, call the Hudson County Investigative Unit at (201) 420-3219.

ERRORS MUST BE REPORTED TO US WITHIN 60 DAYS FROM THE DATE YOU DISCOVER THE ERROR.

ACTIONS WE WILL TAKE WHEN YOU REPORT AN ERROR OR FILE A CLAIM

If you report that benefits are missing from your account, here are some actions that we may take including providing you with a temporary credit, letting you know if your claim was approved or denied, and our deadlines for acting on and deciding your claim.

ERRORS WHICH ARE CAUSED BY US:

If we fail to make a payment into your account or your benefits are not made available on the scheduled date, you will not be charged or penalized in any way. You should contact the Customer Service Help Desk immediately at 1-800-264-6589 to report the mistake. If we find that the error is our mistake, we will put the benefits you are owed into your account within one business day. If we find that payment to your account has not yet been authorized, we will advise you to contact your caseworker at the Hudson County Division of Welfare.

ATM ERRORS:

We will usually take no more than 10 business days to finish our investigation and make any necessary adjustments to your account. If our investigation takes longer we will give you a temporary credit if you have cooperated and you have provided us with a written report of your claim. This means we will pay into your account all benefits which are missing or all benefits except for the first $50.00. After 10 business days, our investigation cannot take more than 45 days.

POS ERRORS:

We will usually take no more than 20 business days to finish our investigation. If our investigation takes longer we will give you a temporary credit if you have cooperated and you have provided us with a written report of your claim. This means we will pay into your account all benefits which are missing or all benefits except for the first $50.00. After 20 business days, our investigation cannot take more than 90 days.

LETTING YOU KNOW WHEN YOUR CLAIM IS DENIED:

If we turn down or deny your claim, we will contact you or mail our results to you within three business days after we complete our investigation. If we gave you a temporary credit and your claim is denied, we will treat the temporary credit as an overpayment and will take steps to get back the funds we paid into your account to which you are not entitled. If you disagree with our final decision, you may request a fair hearing.

YOU HAVE THE RIGHT TO RECEIVE INFORMATION THAT WE USE TO INVESTIGATE ANY CLAIM OF A LOST OR STOLEN CARD AND/OR LOST OR STOLEN BENEFITS THAT YOU FILE:

By making your request through the Hudson County Investigative Unit copies of records used to investigate your claim will be provided to you.

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YOU HAVE THE RIGHT TO APPEAL OUR DECISION IF WE DENY YOUR ERROR CLAIM:

If you file a claim and we deny your claim, you have the right to request a fair hearing. You can request a hearing by writing to either the:

Hudson County Welfare Agency
Fair Hearing Unit
Newkirk Street—7th Floor
Jersey City, New Jersey 07306
or
New Jersey Division of Family Development
CN 716
Trenton, New Jersey 08625

You may also call the County Welfare Agency at (201) 420-3129 to request a fair hearing.

You must request a fair hearing within 10 days of the mailing date of our final decision. If you need more information about the way we investigate errors, you can call the Hudson County Investigative Unit at (201) 420-3219.

LETTING YOU KNOW WHEN YOUR CLAIM IS APPROVED:

If we find that your claim is correct, we will contact you or mail our results to you and fix the error within one business day after we finish our investigation. If we gave you a temporary credit and we agree with your claim, the credit will become final.

PROVIDING YOU WITH ADDITIONAL INFORMATION ABOUT OUR INVESTIGATION PROCEDURES:

If you need more information about our error claim procedures, you can call us at the Hudson County Investigative Unit at (201) 420-3219.

WHEN WE MIGHT DISCLOSE INFORMATION ABOUT YOUR FAMILIES FIRST ACCOUNT TO OTHERS:

In general, information about your Families First account is kept secret or confidential. Only under special circumstances will we provide information about your account to persons not directly involved in handling the account. The types of circumstances under which information would be released include:

When the information is necessary for completing your purchase or withdrawal;

When the information is necessary to prove to a merchant that your account is real and active;

When we are required by Federal, State, or local law to provide it for investigative or review purposes;

When we are required by court order to provide it;

When the information is needed to help resolve an error claim; or

When you give us written permission to release the information.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Capital Funding Program for Community Based Substitute Care, General Social Service and Partial Care Facilities

Readoption with Amendments: N.J.A.C. 10:125

Proposed: February 6, 1995 at 27 N.J.R. 431(a).

Adopted: April 19, 1995 by William Waldman, Commissioner, Department of Human Services.

Filed: April 26, 1995 as R.1995 d.260, **without change**.

Authority: N.J.S.A. 30:1-12, P.L. 1980, c.119, P.L. 1984, c.7 and P.L. 1989, c.184.

Effective Date: April 26, 1995.

Expiration Date: April 26, 2000.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

The rules proposed for readoption with amendments do not contain subject matter governed by Federal law, regulation or other requirement and, therefore, an Exeuctive Order No. 27 analysis is not required.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:125.

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

10:125-1.1 Legal authority, applicability, scope, purpose

(a) This chapter applies to State contracts for the renovation and construction of community based facilities. This chapter implements one portion of the New Jersey Public Purpose Buildings Construction Bond Act of 1980, one portion of the New Jersey Human Services Facilities Construction Bond Act of 1984 and one portion of the Public Purpose Buildings and Community-Based Facilities Construction Bond Act of 1989 and complements N.J.A.C. 10:3-2. The purpose of the program is to utilize funds from the New Jersey Public Purpose Buildings Construction Bond Act of 1980, the New Jersey Human Services Facilities Construction Bond Act of 1984 and the Public Purpose Buildings and Community-Based Facilities Construction Bond Act of 1989 to assist in the renovation, purchase and construction of community based substitute care, general social service and partial care facilities which provide services to families and children under the auspices of the Division of Youth and Family Services. The scope of this program is limited to the purposes mentioned above for those who are either parties to or candidates for a service contract with the Division.

(b) (No change.)

10:125-3.5 Assurance of non-discrimination

The Division shall obtain assurance from each applicant that all portions and services of the entire facility for the construction of which or in connection with which aid under the New Jersey Public Purpose Buildings Construction Bond Act of 1980 or under the New Jersey Human Services Facilities Construction Bond Act of 1984 or under the Public Purpose Buildings and Community-Based Facilities Construction Bond Act of 1989 is sought shall be made available without discrimination on account of race, creed, color, national origin or handicapping condition; and that no professionally qualified person shall be discriminated against on account of race, creed, color, national origin or handicapping condition with respect to the privilege of professional practice in the facility.

INSURANCE

(b)

DIVISION OF ADMINISTRATION

Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance; Use of Symbol, Vehicle Series and Model Year Rating Programs for Physical Damage Coverages

Adopted Amendment: N.J.A.C. 11:3-16.7

Proposed: April 3, 1995 at 27 N.J.R. 1356(a).

Adopted: May 12, 1995 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: May 12, 1995 as R.1995 d.288, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29A-36.2 and 36.3, and 17:33B-31.

Effective Date: June 5, 1995.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department received written comments from the following insurers and trade associations:

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Allstate Insurance Company
American Insurance Association
New Jersey Manufacturers Insurance Company
Professional Insurance Agents of New Jersey

COMMENT: All four commenters favored adoption of the proposal. Among the comments were the following:

"In general, model year rating is an important method of passing on to consumers the comparative risk for insured losses of the vehicles they drive. This rewards people for purchasing safer, more theft-proof and less damage-prone vehicles. The model year rating program also has an important loss prevention function. It can serve as an important advocacy tool and market device to encourage the purchase and manufacture of safer, more theft-proof and less damage-prone motor vehicles.

The proposed regulation will allow, consistent with law and the important objectives set forth above, the flexible use of model year rating. The joint development authority in the regulation is particularly important, as large numbers are critical in assigning the most accurate rating symbols for vehicle models. Thus, the pooled experience is fundamental to both the accuracy and preventive goals of model year rating.

By making standardized symbol and identification information available for continued use, the overall procedures in the marketplace are streamlined and the costs of this activity to insurance companies, producers and consumers are minimized."

RESPONSE: The Department appreciates the support expressed by each commenter.

Full text of the adoption follows:

11:3-16.7 Jointly developed historical data

(a)-(h) (No change.)

(i) Insurers may use symbol, vehicle series and model year rating programs for physical damage coverages; jointly develop symbol assignments, vehicle series and model year data; and jointly determine adjustments to symbol assignments.

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM

SEH Program Premium Comparison Survey Adopted New Rules: N.J.A.C. 11:21-19 and 11:21 Appendix, Exhibit FF

Proposed: March 20, 1995 at 27 N.J.R. 1127(b).

Adopted: May 12, 1995 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: May 12, 1995 as R.1995 d.289, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6e and 17B:27A-33.

Effective Date: June 5, 1995.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:

The Department of Insurance ("Department") received two timely written comments from the Home Life Financial Assurance Corporation and the Guardian Life Insurance Company of America.

COMMENT: One commenter expressed concern with N.J.A.C. 11:21-19.3(c), which requires insurers to file completed survey forms by September 1 of each year reflecting the monthly premiums to be charged for each of the five standard health benefits plans, the HMO plan and any standard rider packages, as of January 1 of the subsequent year. The commenter believed that September 1 is too early a date to require carriers to file premiums to be used as of January 1 of the next year. The commenter stated that premium development is done from two to three months in advance of the date the carrier proposes to implement rate revisions. The commenter stated that requiring carriers to perform this analysis and development five or more months in advance could result in premium rates which do not accurately or adequately reflect the rates being assumed. The commenter thus believed that a more reasonable filing date would be November 1.

RESPONSE: The Department recognizes the concerns expressed by the commenter and agrees that September 1 may be problematic in terms of reporting rates to be effective January 1 of the following year. The Department agrees that November 1 would be more appropriate. Accordingly, N.J.A.C. 11:21-19.3(c) has been revised upon adoption to provide that the annual survey forms shall be due November 1, beginning November 1, 1995, reflecting premiums as of January 1 of the following year.

COMMENT: One commenter expressed concern that the requirement that insurers file rates by September 1 to be effective the following January 1 could bind the insurer to use the illustrated rate level. The commenter stated that there may be circumstances when deteriorating experience may force the insurer to make periodic adjustments to its new business rate level. The commenter stated that a likely time for readjusting rates is after the third quarter financial results/claims experience is available and evaluated. The commenter requested assurances that if it presents a "good faith" projection of its January 1 rate level, it is still free to make adjustments based on subsequent evaluation of emerging experience information.

RESPONSE: Initially, the Department notes that with the change discussed above to the filing date, much of this commenter's concern should be addressed. In any event, the survey submitted pursuant to the proposed rules is the insurer's rates as of, or estimated as of, the date the survey is filed. Filing of the survey pursuant to these rules in no way precludes the insurer from making any rate adjustment pursuant to N.J.S.A. 17B:27A-25 and administrative rules promulgated thereunder. The Department believes that this should alleviate the commenter's concerns.

Summary of Agency-Initiated Change:

As an accommodation to the Small Employer Health Benefits Program Board, which has also proposed rules which contain an "Exhibit EE" to the Appendix of N.J.A.C. 11:21, the Department has recodified Exhibit EE for these rules as Exhibit FF.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because these rules set forth filing and format requirements for the submission of premium data by small employer carriers to implement N.J.S.A. 17:27A-33g, and are not subject to any Federal requirements or standards.

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 19. SEH PROGRAM PREMIUM COMPARISON SURVEY

11:21-19.1 Purpose and scope

(a) This subchapter requires the annual submission of data by small employer carriers to the Department, and establishes the format for the submission of such data, regarding premiums charged for the five standard health benefits plans, the HMO plan, and any standard rider packages established by the Board, so that the Department may develop and publish an annual SEH Program Premium Comparison Survey, pursuant to N.J.S.A. 17B:27A-33g.

(b) This subchapter shall apply to all small employer carriers.

11:21-19.2 Definitions

The following words and terms, when used in this subchapter, shall have the meanings as defined at N.J.S.A. 17B:27A-17 and N.J.A.C. 11:21-1.2, unless defined below or the context clearly indicates otherwise.

"Standard health benefits plan" means a health benefits plan promulgated by the SEH Board subject to review and approval by the Commissioner.

"Standard rider" means a rider promulgated by the SEH Board to be offered with one or more of the standard health benefits plans.

11:21-19.3 SEH Program premium comparison survey

(a) Every small employer carrier shall prepare and file with the Department a premium survey reflecting premiums charged for each of the five standard small employer health benefits plans, the HMO plan, and for any standard rider packages, as set forth in Exhibit *[EE]* ***FF*** of the Appendix to this chapter, incorporated herein by reference.

(b) Every small employer carrier shall complete the survey in the format set forth in Exhibit *[EE]* ***FF*** in accordance with the

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instructions set forth therein, and shall not vary the information solicited in Exhibit *[EE]* ***FF***.

(c) Completed survey forms shall be filed no later than *[September]* ***November*** 1 of each year, and shall reflect the monthly premiums to be charged for each of the five standard health benefits plans, the HMO plan, and any standard rider packages as of January 1 of the year immediately following. The initial survey shall be due *[September]* ***November*** 1, 1995 reflecting premiums as of January 1, 1996.

(d) In addition to the requirements in (c) above, every small employer carrier shall complete and submit a survey in the format set forth in Exhibit *[EE]* ***FF*** no later than July 1, 1995, which shall reflect the monthly premiums charged as of that date for each of the five standard health benefits plans, the HMO plan, and any standard rider packages, with appropriate modification of the dates set forth in Exhibit *[EE]* ***FF***.

(e) All filings shall be accompanied by the following certification signed by the person who completed the survey: "I _____ certify that the information set forth in the attached SEH Program Premium Comparison Survey is true and accurate, and hereby further certify that I am authorized to execute this certification on behalf of the carrier named in the survey."

(f) Completed survey forms and signed certification shall be filed with the Department pursuant to this subchapter at the following address:

SEH Program Premium Comparison Survey
Division of Public Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

11:21-19.4 Penalties

Failure to comply with the requirements of this subchapter may result in the imposition of penalties as authorized by law, including, but not limited to, penalties set forth in N.J.S.A. 17B:27A-17 et seq.

APPENDIX
EXHIBIT *[EE]* ***FF***

SEH PROGRAM PREMIUM COMPARISON SURVEY

Submit this completed survey in duplicate no later than September 1 of each year to: SEH Program Premium Comparison Survey, Division of Public Affairs, New Jersey Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625.

Part 1
COMPANY AND RESPONDENT INFORMATION

Company Name: _____ NAIC: _____

Respondent's Name: _____

Respondent's Title: _____

Respondent's Address: _____

_____

Respondent's Telephone: _____

Respondent's Facsimile: _____

Part 2
TOLL-FREE INFORMATION

Company's Toll-Free Telephone number where an applicant may obtain a premium quote: _____

Please indicate if a switchboard or message recording is reached by the toll-free number and the respective period of service:

Switchboard Service Times: _____

Message Recording Service Times: _____

Part 3
DIRECTIONS FOR COMPLETING THE PREMIUM SURVEY

A. Specify the monthly premium, rounded to the nearest whole dollar, that will be charged for a standard policy issued on the next January 1 to an employer as set forth in paragraph C below, for each policy form and rider in the categories listed in the survey for each plan in accordance with paragraph D below. In showing the rider premium, list only the additional premium for a rider, not the total premium for a plan including the rider. The following abbreviations apply:

SCA = Selective Contracting Arrangement (that is, an arrangement for the payment of predetermined fees or reimbursement levels for covered services by the carrier to preferred providers or preferred provider organizations (see N.J.A.C. 11:4-37.2)).

NR = The plan is offered or purchased without any standard riders.

PC = The prescription card rider (Exhibit H or J, Part 2 of the Appendix to N.J.A.C. 11:21).

PM = The prescription mail order rider (Exhibit H or J, Part 3 of the Appendix to N.J.A.C. 11:21).

PMC = The prescription card and mail order rider (Exhibit H or J, Part 1 of the Appendix to N.J.A.C. 11:21).

MH = The mental/nervous and substance abuse rider (Exhibit I of the Appendix to N.J.A.C. 11:21).

B. Use "NA" to indicate when any rider or plan variation is not being offered.

C. For purposes of completing the survey, assume the following policyholder:

Three small employers, one of each employer being located in the following counties: Camden, Middlesex, and Bergen, and each with six employees as follows:

1. Single Female—age 27
2. Single Male—age 37
3. Female Parent—age 47, with two children
4. Male Employee and Spouse—both age 57
5. Male Employee—age 27
   Spouse—age 24
   Two children—both under age 18
6. Female Employee—age 47
   Spouse—age 50
   Two children—both under age 18

D. For purposes of completing the survey, show the premium for only one delivery system option as described on the form, and indicate by checking the appropriate space if other delivery systems for the plan are available.

Part 4
PREMIUM SURVEY

PLAN A

Carrier: _____

SEH PROGRAM PREMIUM COMPARISON SURVEY___
PLAN A PREMIUM 1/1/19___

Camden
$250 $_____ NR

Middlesex
$250 $_____

Bergen
$250 $_____

Premium Rate Guarantee Period (if any): _____

Above Premiums
Based on (check one):

Traditional _____

SCA—No Gatekeeper _____

SCA—Gatekeeper _____

Other Delivery Systems Available: Yes _____ No _____

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Note: Coinsurance percentages for Plan A are established by rule - - no variations are permitted. See Exhibit A of Appendix to N.J.A.C. 11:21.

PLAN B

Carrier: _____

SEH PROGRAM PREMIUM COMPARISON SURVEY—
PLAN B PREMIUM 1/1/19___

Camden

	NR	PC	PM	PMC	MH
$250	$_____	$_____	$_____	$_____	$_____
$500	$_____	$_____	$_____	$_____	$_____
$1,000	$_____	$_____	$_____	$_____	$_____

Middlesex

	NR	PC	PM	PMC	MH
$250	$_____	$_____	$_____	$_____	$_____
$500	$_____	$_____	$_____	$_____	$_____
$1,000	$_____	$_____	$_____	$_____	$_____

Bergen

	NR	PC	PM	PMC	MH
$250	$_____	$_____	$_____	$_____	$_____
$500	$_____	$_____	$_____	$_____	$_____
$1,000	$_____	$_____	$_____	$_____	$_____

Premium Rate Guarantee Period (if any): _____

Above Premiums
Based on (check one):

Traditional _____

SCA—No Gatekeeper _____
Coinsurance Percentage:
In-Network ____ Copay (if any) $_____
Out-of-Network ____

SCA—Gatekeeper _____
Coinsurance Percentage:
In-Network ____ Copay (if any) $_____
Out-of-Network ____

Other Delivery Systems Available: Yes _____ No _____

PLAN C

Carrier: _____

SEH PROGRAM PREMIUM COMPARISON SURVEY—
PLAN C PREMIUM 1/1/19___

Camden

	NR	PC	PM	PMC	MH
$250	$_____	$_____	$_____	$_____	$_____
$500	$_____	$_____	$_____	$_____	$_____
$1,000	$_____	$_____	$_____	$_____	$_____

Middlesex

	NR	PC	PM	PMC	MH
$250	$_____	$_____	$_____	$_____	$_____
$500	$_____	$_____	$_____	$_____	$_____
$1,000	$_____	$_____	$_____	$_____	$_____

Bergen

	NR	PC	PM	PMC	MH
$250	$_____	$_____	$_____	$_____	$_____
$500	$_____	$_____	$_____	$_____	$_____
$1,000	$_____	$_____	$_____	$_____	$_____

Premium Rate Guarantee Period (if any): _____

Above Premiums
Based on (check one):

Traditional _____

SCA—No Gatekeeper _____
Coinsurance Percentage:
In-Network ____ Copay (if any) $_____
Out-of-Network ____

SCA—Gatekeeper _____
Coinsurance Percentage:
In-Network ____ Copay (if any) $_____
Out-of-Network ____

Other Delivery Systems Available: Yes _____ No _____

PLAN D

Carrier: _____

SEH PROGRAM PREMIUM COMPARISON SURVEY—
PLAN D PREMIUM 1/1/19___

Camden

	NR	PC	PM	PMC	MH
$250	$_____	$_____	$_____	$_____	$_____
$500	$_____	$_____	$_____	$_____	$_____
$1,000	$_____	$_____	$_____	$_____	$_____

Middlesex

	NR	PC	PM	PMC	MH
$250	$_____	$_____	$_____	$_____	$_____
$500	$_____	$_____	$_____	$_____	$_____
$1,000	$_____	$_____	$_____	$_____	$_____

Bergen

	NR	PC	PM	PMC	MH
$250	$_____	$_____	$_____	$_____	$_____
$500	$_____	$_____	$_____	$_____	$_____
$1,000	$_____	$_____	$_____	$_____	$_____

Premium Rate Guarantee Period (if any): _____

Above Premiums
Based on (check one):

Traditional _____

SCA—No Gatekeeper _____
Coinsurance Percentage:
In-Network ____ Copay (if any) $_____
Out-of-Network ____

SCA—Gatekeeper _____
Coinsurance Percentage:
In-Network ____ Copay (if any) $_____
Out-of-Network ____

Other Delivery Systems Available: Yes _____ No _____

PLAN E

Carrier: _____

SEH PROGRAM PREMIUM COMPARISON SURVEY—
PLAN E PREMIUM 1/1/19___

Camden

	NR	PC	PM	PMC	MH
$150	$_____	$_____	$_____	$_____	$_____

Middlesex

	NR	PC	PM	PMC	MH
$150	$_____	$_____	$_____	$_____	$_____

Bergen

	NR	PC	PM	PMC	MH
$150	$_____	$_____	$_____	$_____	$_____

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Premium Rate Guarantee Period (if any): _____

Above Premiums
Based on (check one):

Traditional _____

SCA—No Gatekeeper _____
Coinsurance Percentage:
In-Network ____ Copay (if any) $_____
Out-of-Network ____

SCA—Gatekeeper _____
Coinsurance Percentage:
In-Network ____ Copay (if any) $_____
Out-of-Network ____

Other Delivery Systems Available: Yes _____ No _____

HMO PLAN

Carrier: _____

SEH PROGRAM PREMIUM COMPARISON SURVEY—
HMO PLAN PREMIUM 1/1/19___

Camden

	NR	PC	PM	PMC
$5	$_____	$_____	$_____	$_____
$10	$_____	$_____	$_____	$_____
$15	$_____	$_____	$_____	$_____
$20	$_____	$_____	$_____	$_____

Middlesex

	NR	PC	PM	PMC
$5	$_____	$_____	$_____	$_____
$10	$_____	$_____	$_____	$_____
$15	$_____	$_____	$_____	$_____
$20	$_____	$_____	$_____	$_____

Bergen

	NR	PC	PM	PMC
$5	$_____	$_____	$_____	$_____
$10	$_____	$_____	$_____	$_____
$15	$_____	$_____	$_____	$_____
$20	$_____	$_____	$_____	$_____

Premium Rate Guarantee Period (if any): _____

_____

LABOR

(a)

STATE EMPLOYMENT AND TRAINING COMMISSION

Workforce Development Partnership Program Reporting Requirements for the Assessment of Employment and Training Programs

Adopted New Rules: N.J.A.C. 12:23-8

Proposed: March 20, 1995 at 27 N.J.R. 1131(a).

Adopted: May 12, 1995 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: May 12,1995 as R.1995 d.286, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:15B-40(c), 34:15C-6(h), 34:15C-13, 34:15D-8(d) and 34:15D-11.

Effective Date: June 5, 1995.

Expiration Date: April 4, 1999.

Summary of Hearing Officer's Report and Agency Response:

A public hearing on the proposed new rules was held on April 11, 1995 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. While no one appeared to give testimony on the proposed new rules, Charles Marciante, President, New Jersey State AFL-CIO provided written comments. 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 Deirdre L. Webster, Regulatory Officer, Office of Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, New Jersey 08625-0110.

Summary of Public Comments and Agency Responses:

Written comments were received from Charles Marciante, President, New Jersey State AFL-CIO.

COMMENT: The proposed rules facilitate and encourage an information system for purposes of the New Jersey Occupational Information Coordinating Committee (NJOICC) and the State Employment and Training Council (SETC). However, in view of the Right to Know Laws, information obtained might not be exclusive.

RESPONSE: Both the State Right to Know Law and the Federal Freedom of Information Act provide for the release of records which are required by law to be made, maintained or kept on file by a government entity unless exempt by statute, legislative resolution, executive order, rule of court, Federal law, regulation or order, or by any regulation promulgated under the authority of any statute or executive order of the Governor. There are several Federal regulations which protect the confidentiality of the information being reported to the NJOICC and SETC. For example, 34 C.F.R. 361.9, precludes the Department of Human Services from disclosing to the public any client information obtained in the delivery of services. It should also be noted that the Federal Privacy Act would preclude the NJOICC and SETC from disclosing student data information to the public since that law mandates that the NJOICC and SETC use the information reported only for the purposes they describe, namely, to evaluate the effectiveness of education and training programs, establish standards for training and job placement and develop the labor demand list for employment and training programs.

COMMENT: Assessment of costs should be made to determine that funds are not diverted from direct training benefits or hardships occasioned upon training providers.

RESPONSE: Most training providers already collect the information being reported to the NJOICC and SETC. These training providers have also already established mechanisms for paying for the costs of recordkeeping and reporting systems in their budgets. Therefore, the rules are not anticipated to divert funds from direct training or result in additional costs. However, those training providers, such as private schools, which do not currently collect social security numbers from students will bear some costs in complying with these rules. These costs will be limited to administrative costs associated with establishing recordkeeping and reporting systems so that they can report student outcome and licensing information to the appropriate agency.

COMMENT: The proposal provides that "NJOICC will only use aggregate statistical summaries of individual data." The need for individual social security numbers for aggregate information needs clarification because it creates a suspicion of permanent individual records which could not be in the interest of the former students.

RESPONSE: The information reported is limited to an education or training program participant's social security number, demographic characteristics, date of enrollment, date of completion, date of termination, date of application for a license, licensing examination result, and date of issue of license. The information does not include individual student performance records, that is, grades. The NJOICC and SETC are not collecting individual student performance records since it is only interested in whether a student participated in a training program, completed the training program and obtained a job as a result of a training program. This information is necessary to evaluate the effectiveness of education and training programs, establish standards for training and job placement and develop the labor demand list for employment and training programs. In addition, it should be noted that the information will only be shared between government agencies. As a result, the Department does not believe there will be an adverse impact on former students. Still, to address the AFL-CIO's concern that any information reported not follow a student indefinitely, the Department is amending its rules to establish a retention period for individual student records. Specifically, it will add N.J.A.C. 12:23-8.4(e) to provide that the NJOICC and SETC shall maintain individual student records for no more than three years.

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COMMENT: N.J.A.C. 12:23-8.5 needs clarification because subsection (a) limits information to governmental purposes but subsection (b) implies release to the public. Subsection (c) limits denial of access to correspondence, documents, or "data" information where non-disclosure is necessary to protect the public interest.

RESPONSE: The information reported will be shared only between government agencies to evaluate the effectiveness of education and training programs, establish standards for training and job placement and develop the labor demand list for employment and training programs. The rules specifically provide that the NJOICC and SETC will not release information which identifies individuals to the public. They also provide that the NJOICC and SETC may deny access to any information where non-disclosure is necessary to protect the public interest. To clarify that information reported will only be shared between government agencies and that any information disclosed will not identify individual students, the Department is amending the rules at N.J.A.C. 12:23-8.5(b) to delete "to the public" and N.J.A.C. 12:23-8.5(c) to replace "may" with "will."

COMMENT: The disclosure paragraph refers only to information collected by the NJOICC. The proposal does not prohibit or prevent local schools from furnishing information.

RESPONSE: The NJOICC and SETC is collecting information from qualified agencies and schools as defined in N.J.A.C. 12:23-8.3 for the purpose of evaluating the effectiveness of education and training programs, establishing standards for training and job placement and developing the labor demand list for employment and training programs. This has nothing to do with local schools and therefore there is no need to collect information from them.

COMMENT: A national computer bank has been soliciting local schools to participate in their information system through purchase of program discs. The subscribers which includes employers, could obtain information good and bad about particular trainees for a fee. The social security numbers would facilitate this activity. The AFL-CIO is concerned that poor student records could harm trainees during their work life.

RESPONSE: The Department has no knowledge of the referenced national computer bank. The information reported under these rules will be shared only between government agencies for the purpose of evaluating the effectiveness of education and training programs, establishing standards for training and job placement and developing the labor demand list for employment and training programs. However, to address the AFL-CIO's concern that the information reported will follow trainees during their work life, the Department is amending the rules to establish a retention period for information reported. Specifically, the NJOICC and the SETC will maintain individual student records for no more than three years (see N.J.A.C. 12:23-8.4(e)).

Executive Order No. 27 Statement

The new rules do not exceed standards or requirements imposed by Federal law. The reporting requirements set forth in these rules are authorized by the Job Training Partnership Act, 29 U.S.C. Section 1501 et seq. which mandates that the State Job Training Coordinating Council, in this case the SETC, establish standards for training and job placement and evaluate employment and training programs. The new rules make it possible for the SETC to more effectively accomplish this mandate.

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 8. REPORTING REQUIREMENTS FOR ASSESSMENT OF EMPLOYMENT AND TRAINING PROGRAMS

12:23-8.1 Purpose

(a) The purpose of this subchapter is to collect student outcome and licensing information including individual social security number for use in:

1. Developing the labor demand list for the Workforce Development Partnership Program and other employment and training programs;

2. Establishing standards for training and job placement; and

3. Evaluating the effectiveness of programs and services under the State's workforce readiness system.

12:23-8.2 Scope

This subchapter shall apply to qualified agencies which oversee occupational and directly related education and training at a qualified school or issue an occupational license.

12:23-8.3 Definitions

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

"New Jersey Occupational Information Coordinating Committee or NJOICC" means the agency of State government responsible for developing, managing and overseeing the Statewide comprehensive occupational information system including analysis of labor market supply and demand.

"Occupational license" means a license, registration or certificate which, when issued by an authorized entity of government, enables an individual to work within a recognized occupation in the State of New Jersey.

"Qualifying agency" means any executive agency of State government, including, but not limited to, the Departments of Education, Human Services, Labor, and Law and Public Safety, and the Commission on Higher Education, that oversees the operation of, or collects and/or disseminates information from any qualifying school, or issues an occupational license.

"Qualifying school" means a government unit, person, firm, corporation, private organization, or business entity doing business and maintaining facilities within the State which:

1. Operates for profit or not for profit;

2. Offers or maintains a course of instruction or instructional program to prepare individuals for entry level employment or provides supplemental instruction in a recognized occupational area;

3. Offers occupational instruction through classroom, shop or laboratory experience, or correspondence or both;

4. Offers occupational instruction to the general public or in conjunction with "Job Training Partnership Act" (JTPA) providers; or

5. Charges tuition or other fees or costs for the delivery of any of the above.

"State Employment and Training Commission" or "SETC" means the agency of State government designated to assist and develop the State employment and training policy and to oversee the operation of the entire New Jersey workforce readiness system.

"Student outcome information" means information pertaining to individual enrollment and participation in any occupationally specific education and/or training program designed to provide entry level occupational skills or provide supplemental education and/or training in a recognized occupation. This information shall include any relevant data items as specified by the SETC or the NJOICC, including participant's social security number, demographic characteristics, date of enrollment, date of completion, date of termination, date of application for a license, licensing examination result, and date of issue of a license.

12:23-8.4 Reporting requirements

(a) A qualifying agency shall report student outcome and licensing information, including social security numbers, to the State Employment and Training Commission through the New Jersey Occupational Information Coordinating Committee.

(b) Any entity which reports student outcome or licensing information to a qualifying agency shall request that its students or licensees voluntarily provide their social security numbers. Such request shall state that:

1. The disclosure of the social security number is voluntary;

2. The social security numbers will be used by the NJOICC and SETC to prepare a labor demand list, to establish standards for training and job placement and, to evaluate the effectiveness of programs and services under the State's workforce readiness system; and

3. The NJOICC and SETC are authorized to access the files and records of other State agencies which administer or fund employment and training programs by N.J.S.A. 34:15C-6(h) and may request the voluntary disclosure of social security numbers through the Commissioner of Labor's authority under N.J.S.A. 34:15B-40 and 34:15D-8, provided such request is made in accordance with the Privacy Act, 5 U.S.C. Section 552(a)(note)(b).

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(c) Any executive agency of State government which is precluded from reporting information on specific individuals by Federal statute may report student outcome and licensing information through statistical summary only.

(d) The information required by (a) and (c) above shall be provided annually to the NJOICC at the following address by August 31st for the preceding State fiscal year ending June 30th:

NJOICC
CN 056
Trenton, New Jersey 08625-0056

(e) The SETC and NJOICC shall maintain individual student records for no more than three years.

12:23-8.5 Disclosure of information

(a) Information collected by the NJOICC from qualifying agencies will only be utilized for authorized governmental purposes. The NJOICC will only use aggregate statistical summaries of individual data in assessing or evaluating any program at a qualifying school.

(b) The SETC and NJOICC will not publish or otherwise release *[to the public]* information which could identify any person.

(c) The SETC and NJOICC *[may]* ***will*** deny access to any correspondence, documents or date information where non-disclosure is necessary to protect the public interest.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF ACCOUNTANCY

Board of Accountancy Rules

Readoption with Amendments: N.J.A.C. 13:29

Proposed: March 20, 1995 at 27 N.J.R. 1134(a).

Adopted: April 25, 1995 by the State Board of Accountancy, Joel J. Rogoff, President.

Filed: May 16, 1995 as R.1995 d.268, **without change**.

Authority: N.J.S.A. 45:2B-6(g) and 45:2B-17.

Effective Date: May 1, 1995, Readoption;
June 5, 1995, Amendments.

Expiration Date: May 1, 2000.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the adopted rules and amendments do not involve any Federal standard or regulation.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:29.

Full text of the adopted amendments follows:

13:29-1.6 Applications for original examination

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

(c) An applicant who has passed all parts of the examination shall furnish evidence of two years' diversified experience in public accounting in the office of a Certified Public Accountant, or Public Accountant, or firm of which one member is a Certified Public Accountant, or Public Accountant. Experience shall be obtained in full-time regular employment based on a seven-hour day and a five-day work week. Part time experience will be considered equivalent if acquired within four consecutive years and in no less than the same amount of hours required for full time experience. Twenty-five percent of full or part time experience must be acquired in the area of Audit, Review and Compilation. Such evidence shall take the form of a notarized affidavit on the employer's letterhead indicating in detail the nature of the diversified experience in public accounting.

(d) In lieu of the experience required in (c) above, the Board may accept four years or more experience obtained as an Internal Revenue agent employed in the Field Division of the Internal Revenue Service, in a classification grade level acceptable to the Board. Any part of a period of experience obtained in the employment of a Certified Public Accountant or Public Accountant may be considered as part of the four years' experience with the Internal Revenue Service.

(e) In lieu of the experience in (c) above the Board may accept four years of experience in a comparable accounting activity which shall include no less than 12 months in the areas of auditing and accounting.

(f) In lieu of the experience required in (c) above, the Board may accept four years' or more accounting experience obtained in the employment of some state or any political subdivision of the United States.

(g) (No change.)

(h) The Board may, in its discretion, evaluate any and all accounting and auditing experience obtained by any applicant and give appropriate credit for said experience toward the experience required in this section.

13:29-1.9 Chartered accountant

A chartered accountant may sit for the State of New Jersey examinations, and if the candidate passes, the Board may, in its discretion, accept chartered accounting experience. A certificate by endorsement shall not be issued to a chartered accountant.

13:29-1.10 Examinations

(a) Examinations will be held on two consecutive days, in May and November of each year, at a place designated by the Board.

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

(e) Examination papers shall remain in the possession of the Board or its designee for a period of six months after each examination. During the six months an applicant may arrange to review his or her examination papers.

(f)-(h) (No change.)

13:29-1.13 Fees

(a) Fees for original applications, examinations, reexaminations and renewals, for Certified Public Accountants, Public Accountants, partnerships, professional corporations, limited liability companies, or limited liability partnerships and for Certified Public Accountants' license by endorsement are as follows:

1. (No change.)

2. Examination fee, Certified Public Accountant: $125.00;

3. Reexamination fee, all subjects repeated, Certified Public Accountant: $125.00;

4. Reexamination fee for any one, two, or three subjects, Certified Public Accountant: $100.00;

5. Examination fee, Registered Municipal Accountant: $100.00;

6. Reexamination fee, Registered Municipal Accountant: $100.00;

7. Endorsement as Certified Public Accountant: $100.00 plus the application fee as set forth in (a)1 above;

8. Initial license fee for Certified Public Accountant, Registered Municipal Accountant, partnerships, professional corporations, limited liability companies, limited liability partnerships:

i.-ii. (No change.)

9. Biennial registration for Certified Public Accountant, Public Accountant, Registered Municipal Accountant, partnerships, professional corporations, limited liability companies, limited liability partnerships: $80.00;

10.-12. (No change.)

(b) Entities filing an application to become Sponsors of Continuing Professional Education shall pay a fee of $100.00 for administrative costs and evaluation of programs submitted.

1. Sponsor fees shall be charged on a biennial basis on the first business day of July of each odd numbered year.

13:29-2.1 Applications; requirements

Every applicant for the Registered Municipal Accountant's examination shall submit to the Board a written application on a form to be provided by the Board and a photograph (two inches by two inches in size, bust picture, front view, without a hat, taken within 30 days prior to application), provided that the applicant must hold in good standing a New Jersey license as a Certified Public Accountant.

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13:29-2.2 Examinations

(a) Examinations shall be held in November of each year, at a place designated by the Board. Applications shall be filed by November 1 for November examination.

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

(e) Examination papers shall remain in the possession of the Board or its designee for a period of six months after each examination, and during the six months, any applicant may make arrangement to review the examination papers.

(f) (No change.)

(g) Examinations shall include questions on the following;

i. Theory of municipal accounting and problems in municipal accounting;

ii. Municipal law and finance;

iii.-iv. (No change.)

(h) (No change.)

13:29-3.1 Independence

(a) A licensee or a firm of which he or she is a partner, member or a shareholder shall not express an opinion on financial statements of an enterprise in such a manner as to imply that he or she is acting as an independent public accountant with respect thereto unless he or she or his or her firm is independent with respect to such enterprise. Independence will be considered to be impaired if, for example:

1. During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee or his or her firm:

i.-ii. (No change.)

2. During the period of this professional engagement, or at the time of expressing his or her opinion, the partner, member or firm:

i.-iv. (No change.)

13:29-3.14 Form of practice

A licensee or his or her firm may practice public accountancy only in a proprietorship, a partnership, a limited liability company, a limited liability partnership or a professional corporation, organized and or registered in accordance with applicable New Jersey law.

13:29-5.2 Definitions

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

. . .

"Report" means an opinion, report, or other form of language that states or implies assurances as to the reliability of any financial statements, and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing.

13:29-5.3 Quality Enhancement Committee; members; duties; compensation

(a) The Director of the Division of Consumer Affairs shall annually appoint a Standing Committee to be known as the Quality Enhancement Committee (Committee) to assist the Board in the implementation and administration of the Program:

1.-2. (No change.)

3. At least one member of the Committee shall be a Certified Public Accountant, at least one shall be a Public Accountant, and at least one shall be a Registered Municipal Accountant. At least two committee members will also be members of the State Board of Accountancy.

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

13:29-5.7 Review and evaluation of submitted reports

(a) The Committee shall determine, with respect to each report that it reviews:

1.-2. (No change.)

3. Any recommendations the Committee may have concerning possible improvement of the quality of the report, and it shall report its determinations and recommendations to the Board. Reports shall be classified as: acceptable, marginal, substandard, or seriously substandard.

i.-iii. (No change.)

iv. Seriously substandard reports are materially inaccurate or misleading and the deficiencies noted are so egregious that there is evidence that the licensee is performing work that he or she is not qualified to perform.

13:29-5.8 Committee action on reviewed reports

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

(e) The State Board of Accountancy reserves the right to take any action it deems necessary if it appears that the professional conduct reflected in the substandard or seriously substandard report is so serious as to warrant consideration of possible disciplinary action.

13:29-6.2 Credit-hour requirements

(a) Each applicant for a biennial license renewal is required to complete, during the preceding biennial period, 48 hours of continuing education. The types of continuing education programs and other sources of continuing education for which credit hours may be obtained are set forth in N.J.A.C. 13:29-6.5. The 48 hours of continuing education shall include at least 16 credit hours in the areas of auditing, review and compilation for persons who are engaged in the practice of public accounting or are involved with the attest function in issuing audit, review or compilation reports.

(b) (No change.)

(c) The Board may, in its discretion, waive requirements for continuing professional education on an individual basis for reasons of hardship such as health, military service, or other due cause. Inactive accountants shall be exempt from continuing professional education requirements. Inactive licensees are those who do not practice accounting (public or private) or hold themselves out to the public as practicing accountants in any professional capacity. Any licensee who returns to the practice of accounting must notify the Board prior to reentry and shall meet the continuing education requirements by completing 48 credit hours of continuing professional education requirements prescribed by this subchapter within the two year period prior to reentry. Licensees inactive for one year or less will satisfy the requirements by completing at least 24 credit hours of continuing professional education in the year prior to reentry.

(d) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY
Sterile Admixture Services in Retail Pharmacies
Adopted Amendments: N.J.A.C. 13:39-11.3 and 11.16

Proposed: January 3, 1995 at 27 N.J.R. 43(a).

Adopted: April 12, 1995 by the State Board of Pharmacy, Sophie Heymann, President.

Filed: May 1, 1995 as R.1995 d.269, **without change.**

Authority: N.J.S.A. 45:14-26.2.

Effective Date: June 5, 1995.

Expiration Date: June 16, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Executive Order No. 27 Statement

Executive Order No. 27(1994), which became effective on January 1, 1995, was issued by Governor Whitman in order to prevent unnecessary State regulation in areas that are already regulated by the Federal government. In order to comply with Executive Order No. 27, administrative agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements are required to include a comparison with Federal law.

On September 19, 1994, when the Board of Pharmacy initially proposed to update and expand Board requirements for retail pharmacy permit holders providing sterile admixture services, it relied upon a compilation of the best known and most current guidelines for these services as provided by, among others, the Food and Drug Administration (FDA). See, 26 N.J.R. 1303(a).

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Neither the initial new rules nor these adopted amendments contain any standards or requirements which exceed any analogous Federal standards or requirements in connection with the provision of sterile products.

Full text of the adoption follows:

13:39-11.3 Supportive personnel; required supervision

(a) (No change.)

(b) The dispensing pharmacist may delegate to supportive personnel only the tasks set forth below in N.J.A.C. 13:39-11.4(b)2 (recording of the prescription, (b)3 (selection of the drugs, container and diluent), and (b)4 (compounding of sterile admixture. The dispensing pharmacist shall check that each task has been performed correctly prior to any further task being performed in the dispensing process.

13:39-11.16 Anteroom

(a) The anteroom shall have an air quality of Class 10,000 or better.

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

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Fees

Adopted Amendment: N.J.A.C. 13:44-5.1

Proposed: March 20, 1995 at 27 N.J.R. 1137(a).

Adopted: April 24, 1995 by the State Board of Veterinary Medical Examiners, Ernest Zirkle, President.

Filed: May 12, 1995 as R.1995 d.299, **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. 45:16-3, 45:16-9.4 and 45:1-3.2.

Effective Date: June 5, 1995.

Expiration Date: August 4, 1999.

The Board of Veterinary Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment to its fee schedule, N.J.A.C. 13:44-5.1. The notice of proposal appeared in the New Jersey Register on March 20, 1995 at 27 N.J.R. 1137(a), and copies of the published proposal were 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 Board of Veterinary Medical Examiners, Post Office Box 45020, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

One letter was received during the 30-day comment period from Richard J. Alampi, Executive Director, New Jersey Veterinary Medical Association, a professional association representing New Jersey's 1,400 licensed veterinarians. A summary of the commenter's statements, together with the Board's responses, follows:

COMMENT: The licensing fee increase from $150.00 to $250.00 far outstrips inflation or cost-of-living increases since the last fee increase in 1989. Veterinary fees have certainly not increased 66 percent in that time. If an increase is necessary, it should reflect inflationary increases only and should not be more than $180.00.

RESPONSE: The proposal specifically enumerates the reasons the increase is necessary. They are:

1. As of the 1995 fiscal year, the Board is required to support enforcement unit fringe benefit costs such as health benefits, pension contributions and worker's compensation (24.25 percent of base salaries). The Board's estimate of the amount required to fund fringe benefits was based on an estimated 619 investigator hours.

2. The fee increase includes the cost of a projected Statewide negotiated salary increase for State employees for each of the next two years.

3. The increase also includes costs to automate Board office operations so that the Board will operate more efficiently.

Also as noted in the proposal, the Board is required by statute to cover its operating costs through licensing fees. If the Board did not do so, it would not be in compliance with the statute. Finally, the Board notes that the increase represents an additional $50.00 a year for each licensee, which the Board considers to be a reasonable expense of doing business.

COMMENT: The Board does not have statutory authority to issue a branch office certificate; the statute refers only to a "duplicate certificate."

RESPONSE: N.J.S.A. 45:16-9.4 provides clear statutory authority for the Board to issue a branch office certificate. The commenter is correct that N.J.S.A. 45:16-9.4 does not use the term "branch office certificate," but rather refers to a "duplicate certificate." However, a certificate issued to a licensee to practice at a place other than that address for which the licensee's active registration certificate is issued can only be considered to be a branch office; the certificate cannot be considered duplicative of the active registration certificate in that it is issued for, and contains the address of, a different location. Clearly, the intent of the statute is to enable the Board to be apprised of practice locations other than the location listed on the active registration certificate. Furthermore, statutory authority for issuance of a branch office certificate is found at N.J.S.A. 45:16-8.2, which mandates that facilities maintained in connection with the practice of veterinary medicine shall be clean and sanitary, and at N.J.S.A. 45:16-9.3b, which prohibits a facility from using a name or title which misleads the public as to the nature or extent of the services rendered. The Board would be unable to enforce these provisions absent a requirement for a branch office certificate.

Accordingly, the Board proposed use of the term "branch office" to avoid confusion and believes that term should be retained. For further clarification, the Board has amended paragraph (a)11 to delete the word "duplicate."

COMMENT: The proposed fee increase from $50.00 to $80.00 for a duplicate license certificate (branch office) is unreasonable.

RESPONSE: The $80.00 biennial fee for the branch office certificate covers not only the cost of the three by five inch certificate, but the Board's administrative time to open a new file and issue the certificate. The purpose of this statutory requirement is two-fold: to enable the Board to locate and contact, if necessary, all of its licensees and to provide relevant information to the consumer as to the veterinarians working at a veterinary office. The Board believes that the cost for the certificate far outweighs the benefits to the Board and the public in being able to locate and identify licensees. Additionally, the Board believes the fee ($40.00 per year) to be a reasonable cost of doing business.

COMMENT: The requirement for a duplicate license certificate (branch office) is a significant impediment to free trade and reduces access by New Jersey consumers to veterinary medical services. The commenter stated more specifically that the requirement is discriminatory in that it targets sections of the regulated community for significantly higher fees. For example, relief veterinarians—who provide a valuable service to both practitioners and the public—may service upwards of 20 practices. A duplicate license certificate for each practice would cost the relief veterinarian $1,600. Additionally, the statute could be interpreted to require duplicate registrations for large animal mobile practitioners, housecall practitioners, veterinarians who work for rabies clinics, animal shelters and pet stores.

RESPONSE: The Board does not consider the requirement to be discriminatory. A licensee's practice is considered to be any location or locations from which the licensee regularly provides services. Consequently, a relief veterinarian or any other licensee who does not have a permanent practice location would be required merely to carry (and post in each facility) a license certificate bearing his or her home address.

COMMENT: The fee for a duplicate wall certificate should be reduced from $50.00 to $5.00. The commenter stated that he interprets a "wall certificate" to refer to the three by five inch certificate required to be posted by each licensee. The commenter stated more specifically that duplicate driver's licenses cost about $3.00 and that if a licensee were to charge $50.00 to copy a medical record, the Board would consider that an unreasonable fee.

RESPONSE: A "duplicate wall certificate" is not the three by five inch certificate but rather is the large, embossed, hand-caligraphed certificate issued to each licensee on a one-time basis. The $50.00 fee for a replacement certificate (in the event of a change of name, for example) covers Board administrative costs in supplying the certificate to the licensee as well as the actual costs to have the certificate hand-caligraphed.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements pertaining to a fee increase are governed by N.J.S.A. 45:16-3, 45:16-9.4 and 45:1-3.2 and are not subject to any Federal requirements or standards.

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Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

13:44-5.1 General provisions

(a) The following fees shall be charged by the board:

1. Application fee ..... $ 75.00
2. Initial license fee:
i. During the first year of a biennial renewal period $250.00
ii. During the second year of a biennial renewal period $125.00
3. Practical examination $125.00
4. New Jersey Jurisprudence Examination $125.00
5. Temporary permit $100.00
6. Active registration fee $250.00
7. Non-active registration fee $150.00
8. Transfer fee non-active to active:
i. During the first year of a biennial renewal period $100.00
ii. During the second year of a biennial renewal period ..... $ 50.00
9. Late renewal fee $100.00
10. Reinstatement fee ..... $250.00 plus initial license fee
11. *[Duplicate license]* ***License*** registration (branch office) ..... $ 80.00
12. Verification of licensure ..... $ 25.00
13. Duplicate wall certificate ..... $ 50.00

(a)

DIVISION OF CONSUMER AFFAIRS BUREAU OF SECURITIES

Agents of Broker-Dealers and Qualified Issuers Issuer-Agent Registration; General Partners; Requests for Waiver; Exemptions for Securities Transactions and Securities Offerings; Employee Benefit Plans; Accredited Investors

Adopted New Rules: N.J.A.C. 13:47A-3.3, 3.4, and 12
Adopted Amendments: N.J.A.C. 13:47A-3.1 and 4.3

Proposed: January 17, 1995 at 27 N.J.R. 303(a).

Adopted: March 17, 1995 by Thomas J. Gaynor, Chief, Bureau of Securities.

Filed: May 1, 1995 as R.1995 d.270, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: June 5, 1995.

Expiration Date: October 2, 1997.

The Bureau of Securities ("Bureau") afforded all interested parties an opportunity to comment on the proposed new rules and amendments, N.J.A.C. 13:47A-3.3, 3.4, 3.1, 4.3, and 12. The official comment period ended February 16, 1995. Announcement of the opportunity to respond to the Bureau appeared in the New Jersey Register on January 17, 1995 at 27 N.J.R. 303(a). Announcements were also sent to The New Jersey Law Journal, New Jersey State Bar Association, New York Stock Exchange, Securities Industry Association, International Association for Financial Planning, U.S. Securities & Exchange Commission, Commodity Futures Trading Commission, New York Law Journal, Commerce Clearing House, Inc., American Stock Exchange, National Association of Securities Dealers, Inc., Investment Company Institute, North American Securities Administrators Association, Wall Street Journal, Bureau of National Affairs, The Star-Ledger, Philadelphia Inquirer, National Association of Investors Corp., National Association of Personal Financial Advisors, Institute of Certified Financial Planners, National Society of Compliance Professionals, New Jersey Society of Certified Public Accountants, American Bar Association—Section of Business Law, National Law Journal, Philadelphia Stock Exchange, Pacific Stock Exchange, Barron's, New York Times, Midwest Stock Exchange, Securities Week, Wall Street Letter, Trenton Times, Asbury Park Press, Bergen Record, New Jersey Occupational Information Coordinating Committee, Los Angeles Times, Newhouse News Service, The Trentonian, West Publishing Company, Mead Data Central, Standard & Poor's Corporation, Reuters America, Inc., Atlantic City Press, Courier-Post and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Bureau of Securities, P.O. Box 47029, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

No timely comments were received by the Bureau of Securities in response to the proposal. However, two comment letters were received after the comment period had expired. The Bureau believes that the proposed rules in their current form as published on January 17, 1995 at 27 N.J.R. 303(a) adequately address the concerns of the Bureau and the public. However, the Bureau has elected to modify the proposal in light of the comments received.

COMMENT: A comment letter, dated February 21, 1995, was received from Edward M. Alterman, Esquire of the New York law firm of Fried, Frank, Harris, Shriver & Jacobsen. Mr. Alterman was joined in the letter by four other New York attorneys, Richard I. Ellenbogen, Esquire of Weil, Gotshal & Manges; David M. Katz, Esquire of Simpson, Thacher & Bartlett; Peter C. Manbeck, Esquire of Sullivan & Cromwell; and Richard I. Alvarez, Esquire of Milbank, Tweed, Hadley & McCloy.

The letter commented on proposed N.J.A.C. 13:47A-12.2 and stated that the proposed regulation did not go far enough. Specifically, proposed N.J.A.C. 13:47A-12.2 would provide that the exemption for employee benefit plans in N.J.S.A. 49:3-50(a)(11) would be construed to provide a transactional exemption for both the "investment contract" issued in connection with the employee plan and for all securities underlying the plan, if the plan qualified under Section 401 of the Internal Revenue Code, if the plan was subject to Subtitle B of Title I of ERISA, if the plan was exempt from registration under the Securities Act of 1933 pursuant to S.E.C. Rule 701, or if the plan was administered by a bank acting in a fiduciary capacity.

The comment letter stated that the exemption from registration for the underlying securities of the employee plan should be extended to all employee plans for the following reasons: (1) the majority of states grant an exemption from registration to the underlying securities of all employee benefit plans; (2) making a distinction between different types of employee benefit plans serves no investor protection purpose; and (3) there is no justification for treating different employee plans differently.

RESPONSE: The Bureau is trying to grant relief from the registration process for the underlying securities of some employee plans. Previously, the Bureau has taken the position that only the "investment contract" is exempt from registration pursuant to N.J.S.A. 49:3-50(a)(11) and that the underlying securities must be registered or otherwise exempt from registration.

In moving away from a policy of requiring the underlying securities of an employee plan to be registered, the Bureau chose to be cautious and only grant the exemption from the registration requirements to employee plans that were sufficiently regulated elsewhere or subject to sufficient fiduciary responsibilities that the protection of the securities laws afforded by the registration requirements was unnecessary.

At this time, the Bureau prefers to adopt the original proposed N.J.A.C. 13:47A-12.2, without modification. The Bureau is conducting an ongoing review of its statute and regulations, and believes that after it has had experience with the proposed regulation as adopted, the Bureau may at a later time elect to extend the regulation to exempt from registration the underlying securities of all employee plans.

COMMENT: A second comment letter, dated February 23, 1995, was received from Messrs. Alterman, Alvarez, Ellenbogen, Katz and Manbeck. The second comment letter was authored by Mr. Ellenbogen. Joseph G. Krassy, Esquire of the New York office of the law firm of Fulbright & Jaworski L.L.P. also joined in the letter.

The second comment letter recommended a number of small changes and deletions to proposed N.J.A.C. 13:47A-3.4 and proposed N.J.A.C. 13:47A-3.3. Specifically, with respect to N.J.A.C. 13:47A-3.4, the letter notes that, "based upon informal conversations with representatives of the Bureau ... Proposed 3.4 was intended to clarify that officers of a corporate general partner represent the issuer limited partnership." The letter says that as drafted, the proposed language, "could be read to require officers of a corporate general partner to register as 'agents' prior to engaging in an exempt transaction."

The commenters recommended a change to the language to clarify that the regulation was not aimed at requiring officers of a corporate general partner to register as agents in exempt transactions.

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RESPONSE: The Bureau has elected to adopt the suggested change for purposes of clarity.

COMMENT: With respect to proposed N.J.A.C. 13:47A-3.3(a), the second comment letter states that an issuer need not always act through an agent, and that the proposed regulation, "would create what appears to be a [sic] irrevocable presumption that an issuer must sell securities through a registered agent unless its representative falls within a specific exclusion from the definition of 'agent'." Issuance of common shares by a corporation as part of a court approved settlement is cited as one example in which securities are issued without an agent.

RESPONSE: The Bureau did not intend for the proposed regulation to be so restrictive. The Bureau does not seek to register an agent, where no requirement exists under the statute that an agent be registered. Accordingly, the Bureau has modified proposed N.J.A.C. 13:47A-3.3(a) to take into account that there may be situations in which no agent exists, or statutorily no agent is required (whether excluded by N.J.S.A. 49:3-49(b) or elsewhere in the Uniform Securities Law, N.J.S.A. 49:3-47 et seq.).

COMMENT: The second comment letter also recommended deletion of proposed N.J.A.C. 13:47A-3.3(b), because it restates the statutory exclusion from the definition of agent.

RESPONSE: The Bureau believes that it would be useful to reemphasize to everyone that no registration is required for an agent representing an issuer in connection with securities exempted by N.J.S.A. 49:3-50(a)(1) and 49:3-50(a)(2), 49:3-50(a)(3), 49:3-50(a)(11) and transactions exempted by N.J.S.A. 49:3-50(b) (including all of its subsections). The Bureau also notes that the publication of proposed N.J.A.C. 13:47A-3.3(b) at 27 N.J.R. 303(a) inadvertently omitted a line of text which referenced N.J.S.A. 49:3-50(a)(3) and N.J.S.A. 49:3-50(a)(11). The line has been added in the adoption of N.J.A.C. 13:47A-3.3(b). This is not a substantive change, but is a correct restatement of the statutory exclusion.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Bureau of Securities are dictated by the Uniform Securities Law, N.J.S.A. 49:3-47 et seq., and are not subject to any Federal requirements or standards. However, there exists in the United States concurrent Federal-state jurisdiction in the area of securities regulation. The exemptions discussed in the adoption sometimes have Federal counterparts. These rules do not contain any standards or requirements which exceed the standards or requirements imposed by Federal law.

These regulations are in fact an attempt to bring the Bureau's interpretations more in line with Federal law. For example, see N.J.S.A. 13:47A-12.2(b) (securities exempt from Federal registration under SEC Rule 701 now exempt from registration in New Jersey); and N.J.S.A. 13:47A-12.3 (adopts Federal definition of "accredited investor").

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

13:47A-3.1 Agents of broker-dealers and qualified issuers

(a) Any person desiring to act in the State of New Jersey as an agent of a non-NASD member broker-dealer registered in New Jersey directly with the Bureau of Securities or as an agent of a qualified issuer shall file an application with the Bureau of Securities on a form designated N.J. Form SB-3, as set forth in N.J.A.C. 13:47A-11.3. Such application shall be accompanied by:

1. A consent to service of process executed by the applicant;

2. Two applicant non-criminal fingerprint cards (one State Police card and one FBI card) with impressions taken by a recognized law enforcement agency; and

3. A check or money order made payable to the State of New Jersey, Bureau of Securities, in the amount of $60.00.

(b) (No change.)

13:47A-3.3 Issuer-agent registration

(a) All issuers which are effecting or attempting to effect purchases or sales of securities other than through a registered broker-dealer shall register someone as an "agent," unless an exemption ***or exclusion from agent registration*** is available *[pursuant to the definition of "agent" in N.J.S.A. 49:3-49(b)]* ***under the Act***. Only a natural person can be registered as an agent.

(b) Agent registration is not required for an individual who represents an issuer in effecting transactions exempted by N.J.S.A. 49:3-50(a)(1) (securities issued or guaranteed by the United States, a State, or political subdivision thereof); N.J.S.A. 49:3-50(a)(2) (Canadian and other foreign government securities); ***N.J.S.A. 49:3-50(a)(3) (bank securities); N.J.S.A. 49:3-50(a)(11)*** employee benefit plans); and all of the transactional exemptions under N.J.S.A. 49:3-50(b).

(c) For the purposes of the exclusion from the definition of "agent" in N.J.S.A. 49:3-49(b)3, the phrase "existing employees, partners or directors of the issuer," shall include persons occupying those positions with subsidiaries of which the parent issuer owns at least 80 percent of the stock of the subsidiary.

13:47A-3.4 *[Corporate general]* ***General*** partners

A natural person acting on behalf of the *[corporate]* general partner of a partnership *[(issuer) may act as an agent on behalf of the partnership. Similarly, where one partnership is the general partner controlling another partnership, a natural person acting on behalf of the controlling partnership may act as an agent on behalf of the controlled limited partnership]* ***in connection with the offer or sale of the partnership's securities, which general partner is a corporation, partnership or other entity, shall be deemed to be an individual representing the issuer within the meaning of N.J.S.A. 49:3-49(b)***.

13:47A-4.3 Requests for waiver

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

(c) In connection with an exempt transaction or a securities offering under N.J.S.A. 49:3-50 and 49:3-60(b), the Bureau generally will consider favorably an application for waiver of the agent examination requirement and the agent fingerprinting requirement for applicants meeting the requirements of (a) above who represent the issuer. An application for waiver shall be made at least five business days prior to the commencement of the offering by the agent. The waiver application shall include an application for issuer qualification, an application for agent registration and an affidavit or certification that no executive officer of the issuer would disqualify the issuer from selling stock pursuant to Regulation A as provided for in Rule 262 promulgated by the U.S. Securities and Exchange Commission and that the agent, assuming the individual was an underwriter within the meaning of that Rule, would not be disqualified from selling securities pursuant to Regulation A.

SUBCHAPTER 12. EXEMPTIONS FOR SECURITIES TRANSACTIONS AND SECURITIES OFFERINGS; EMPLOYEE BENEFIT PLANS; ACCREDITED INVESTORS

13:47A-12.1 Exemptions for securities transactions and securities offerings

(a) For purposes of the Report Form required to be filed with Bureau of Securities under N.J.S.A. 49:3-50(b)(12) or 49:3-60(b), the issuer shall include only the names and addresses of New Jersey resident purchasers of the offering, along with the number and amount of the securities each purchased.

(b) Non-New Jersey resident purchasers will not be counted when determining whether there are 35 non-accredited purchasers of the offering for the N.J.S.A. 49:3-50(b)(12) exemption.

(c) Non-New Jersey resident offerees will not be counted when determining whether there are 10 offerees in an exempt offering under N.J.S.A. 49:3-50(b)(9).

13:47A-12.2 Employee benefit plans

(a) N.J.S.A. 49:3-50(a)(11) provides an exemption from registration for, "[a]ny investment contract issued in connection with an employees' or professional stock purchase, savings, pension, profit-sharing, retirement or similar benefit plan if the bureau chief is notified in writing 30 days before the inception of the plan. . . ." N.J.S.A. 49:3-50(a)(11) requires a 30-day notification and exempts the agreement between the employer and employee insofar as it may be deemed to be an investment contract. With respect to employee benefit plans which are qualified under Section 401 of the Internal Revenue Code, subject to the provisions of Part 4 of Subtitle B of Title I of ERISA, or administered by a national or state bank acting in a fiduciary capacity, N.J.S.A. 49:3-50(a)(11) shall be construed to provide a transactional exemption for all securities underlying the investment contract.

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(b) Interests in the plan or securities underlying the investment contract in employee benefit plans which are exempt from Federal securities registration pursuant to SEC Rule 701, promulgated under the Securities Act of 1933, shall also be exempt from registration in New Jersey if offered or sold pursuant to N.J.S.A. 49:3-50(a)(11).

(c) The 30-day notification requirement of N.J.S.A. 49:3-50(a)(11) may be fulfilled by filing a letter with the Bureau of Securities setting forth pertinent information, which shall include the name and address of the issuer, the name and address of participating employers and the approximate number of New Jersey employees eligible to participate in the plan. The letter filing will be deemed to constitute full compliance with the notice requirement of N.J.S.A. 49:3-50(a)(11). The Bureau Chief may request additional information on a case-by-case basis.

(d) If a plan otherwise exempt under this section contemplates distribution in kind of restricted stock to plan members upon withdrawal of the members from the plan, resale of the underlying securities by the members may require registration of the securities under Federal law. If Federal law requires registration of the securities being resold, State registration may be required, unless the security or transaction is otherwise exempt from State registration.

(e) The definition of "agent" in N.J.S.A. 49:3-49(b) specifically excludes an individual who represents an issuer in effecting transactions in a security exempted by N.J.S.A. 49:3-50(a)(11); therefore, no agent registration is required for such an individual to effect transactions with respect to the employee benefit plans or the securities underlying the employee benefit plans described in (a) and (b) above.

13:47A-12.3 Accredited investors

Pursuant to the last paragraph of N.J.S.A. 49:3-49(p), in addition to the persons described in N.J.S.A. 49:3-49(p)(1) through (7), any person who is an "accredited investor" within the meaning of Securities Act of 1933, section 2(15) and SEC Rules 215 and 501, promulgated by the Securities and Exchange Commission, effective as of (the effective date of this rule) or as thereafter amended or superseded, shall be deemed an "accredited investor" within the meaning of N.J.S.A. 49:3-49(p).

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Intent of Medication
Adopted Amendment: N.J.A.C. 13:70-14A.1

Proposed: May 16, 1994 at 26 N.J.R. 1955(a).
Adopted: July 21, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: May 12, 1995 as R.1995 d.295, **without change**.

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

Effective Date: June 5, 1995.
Expiration Date: January 25, 2000.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules of racing are dictated by statute, N.J.S.A. 5:5-22, et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rule subject of the instant amendment does not implicate or exceed established Federal standards, including those set forth by the Federal Food and Drug Administration. Accordingly, the instant adoption shall not have any consequences or implications to federal requirements of standards.

Full text of the adoption follows:

13:70-14A.1 Intent of medication rules; general provisions

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

(d) On the day of the race, except as otherwise provided for in these rules, no horse entered to start in or participating in any race shall have administered to it any such drug and/or substance foreign to the natural horse, including as a result of administration of an otherwise permissible external rub or what would otherwise constitute an innocuous compound. In no event, except for the intravenous administration of furosemide (Lasix) pursuant to N.J.A.C. 13:70-14A.9, or as may otherwise specifically be authorized by or pursuant to these rules, shall the administration of said excepted items be accomplished intravenously, by injection, by jugging or drenching, or through the use of a syringe or sharp, dose syringe, or tube apparatus. A non-prohibited external rub or innocuous compound as defined in this section shall on the day of the race be administered only by application on the exterior of the horse, except that food constituting the normal and proper diet of a horse not containing prohibited drugs and/or substances may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.

(e) (No change.)

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Administering Medication to Respiratory Bleeders
Adopted Amendment: N.J.A.C. 13:70-14A.9

Proposed: May 16, 1994 at 26 N.J.R. 1956(a).
Adopted: July 21, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: May 12, 1995 as R.1995 d.298, **without change.**

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

Effective Date: June 5, 1995.
Expiration Date: January 25, 2000.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules of racing are dictated by statute, N.J.S.A. 5:5-22, et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rule subject of the instant amendment does not implicate or exceed established federal standards, including those set forth by the Federal Food and Drug Administration. Accordingly, the instant adoption shall not have any consequences or implications to federal requirements of standards.

Full text of the adoption follows:

13:70-14A.9 Administering medication to respiratory bleeders; standards for the administration of phenylbutazone

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

(f) Notwithstanding anything to the contrary herein or in N.J.A.C. 13:70-14A.1, no penalty shall be imposed where on the day of the race a horse carries in its body phenylbutazone, as a result of an administration prior to the day of the race, in a quantity of 2.5 micrograms per milliliter or less as determined by post-race testing.

(g) Should the judges or stewards, as appropriate, determine that any trainer or persons have violated (f) above, as a result of an administration prior to the day of the race, they shall punish the offending party as follows:

1.-2. (No change.)

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(a)

NEW JERSEY RACING COMMISSION
Harness Rules
Intent of Medication
Adopted Amendment: N.J.A.C. 13:71-23.1

Proposed: May 16, 1994 at 26 N.J.R. 1956(b).
Adopted: July 21, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: May 12, 1995 as R.1995 d.296, **without change**.
Authority: N.J.S.A. 5:5-30.
Effective Date: June 5, 1995.
Expiration Date: January 25, 2000.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules of racing are dictated by statute, N.J.S.A. 5:5-22, et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rule subject of the instant amendment does not implicate or exceed established federal standards, including those set forth by the Federal Food and Drug Administration. Accordingly, the instant adoption shall not have any consequences or implications to federal requirements of standards.

Full text of the adoption follows:

13:71-23.1 Intent of medication rules; general provisions
(a)-(c) (No change.)
(d) On the day of the race, except as otherwise provided for in these rules, no horse entered to start in or participating in any race shall have administered to it any such drug and/or substance foreign to the natural horse, including as a result of administration of an otherwise permissible external rub or what would otherwise constitute an innocuous compound. In no event, except for the intravenous administration of furosemide (Lasix) pursuant to N.J.A.C. 13:71-23.8, or as may otherwise specifically be authorized by or pursuant to these rules, shall the administration of said excepted items be accomplished intravenously, by injection, by jugging or drenching, or through the use of a syringe or sharp, dose syringe, or tube apparatus. A non-prohibited external rub or innocuous compound as defined in this section shall on the day of the race be administered only by application on the exterior of the horse, except that food constituting the normal and proper diet of a horse not containing prohibited drugs and/or substances may be ingested by means limited to the natural intake of a horse without aid or the assistance of any device or apparatus.
(e) (No change.)

(b)

NEW JERSEY RACING COMMISSION
Harness Rules
Administering Medication to Respiratory Bleeders
Adopted Amendment: N.J.A.C. 13:71-23.8

Proposed: May 16, 1994 at 26 N.J.R. 1957(a).
Adopted: July 21, 1994 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: May 12, 1995 as R.1995 d.297, **without change**.
Authority: N.J.S.A. 5:5-30.
Effective Date: June 5, 1995.
Expiration Date: January 25, 2000.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules of racing are dictated by statute, N.J.S.A. 5:5-22, et seq., and by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rule subject of the instant amendment does not implicate or exceed established federal standards, including those set forth by the Federal Food and Drug Administration. Accordingly, the instant adoption shall not have any consequences or implications to federal requirements of standards.

Full text of the adoption follows:

13:71-23.8 Administering medication to respiratory bleeders; standards for the administration of phenylbutazone
(a)-(e) (No change.)
(f) Notwithstanding anything to the contrary herein or in N.J.A.C. 13:71-23.1, no penalty shall be imposed where on the day of the race a horse carries in its body phenylbutazone, as a result of an administration prior to the day of the race, in a quantity of 2.5 micrograms per milliliter or less as determined by post-race testing.
(g) Should the judges or stewards, as appropriate, determine that any trainer or persons have violated (f) above, as a result of an administration prior to the day of the race, they shall punish the offending party as follows:
1.-2. (No change.)

(c)

OFFICE OF HIGHWAY TRAFFIC SAFETY
Motorcycle Safety Education Program
Adopted New Rules: N.J.A.C. 13:85

Proposed: March 20, 1995 at 27 N.J.R. 1145(a).
Adopted: May 2, 1995 by Col. Peter J. O'Hagan, Director, Office of Highway Traffic Safety.
Filed: May 4, 1995 as R.1995 d.273, **without change**.
Authority: N.J.S.A. 27:5F-40.
Effective Date: June 5, 1995.
Expiration Date: June 5, 2000.

Summary of Public Comments and Agency Responses:
The Department received comments from George Zelasko, Jr.

N.J.A.C. 13:85-2.1(a)

COMMENT: Eliminate requirement that applicants possess a valid motorcycle license or endorsement issued by any state or a motorcycle operator learner's permit. Instruction is not carried out on public streets.

RESPONSE: Requirement is imposed by N.J.S.A. 27:5F-36(b): "The motorcycle safety education course shall be open to any applicant for a New Jersey motorcycle license or endorsement and to any person who has been issued a New Jersey motorcycle license or endorsement. . . ."

N.J.A.C. 13:85-2.2(a)

COMMENT: All Motorcycle Safety Foundation (MSF) approved programs should automatically be approved to participate in the New Jersey State Program. Providers may not have any political affiliations.

RESPONSE: This is covered in N.J.S.A. 27:5F-36(b) ". . . The course shall be scheduled for such times and places as the director shall determine are appropriate to enable interested applicants for and persons with motorcycle licenses and endorsements to participate." The Program makes an independent assessment about each and every applicant. Program qualification is not necessarily dependent upon MSF certification. Political affiliation is not relative to the program.

N.J.A.C. 13:85-2.2(b)

COMMENT: Reimbursement should be given for each student on the first day of instruction of new classes so that the provider does not have the incentive to pass students that should not be passed if reimbursement depends on successful completion of the course.

RESPONSE: The commenter is incorrect in his assertion that students must complete the course in order to receive the rebate. Rebates are issued for each student who attends the first classroom session. From this point on, if students

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decide not to continue, they are making an informed decision about motorcycling. No course completion requirement exists.

N.J.A.C. 13:85-3.1(c)

COMMENT: Instructor candidates should not have to pay for the Criminal History Review and Fingerprinting if it is required.

RESPONSE: The fee is set by the Criminal History Regulations and collected by the State Police. The Program does not have the funding to pay for instructor criminal history reviews. Once instructors have completed training, they are compensated for teaching the course.

N.J.A.C. 13:85-3.1

COMMENT: Instructors not be required to obtain First Aid or CPR training. This would put the State liable for this qualification. No site is so remote that help cannot be obtained in a reasonable amount of time. If training is required, the instructor will not be covered under the "Good Samaritan" law.

RESPONSE: The First Aid and CPR requirements were recommended by the Motorcycle Safety Education Advisory Committee with the commencement of the program. A review of the applicable law was made by the Office of the Attorney General. The commenter is incorrect in his assertion that the State of New Jersey could be held liable for the actions of an instructor because of the CPR/First Aid certification requirements. Instructors are employees of the provider, not the State. The State as a public entity is immune from liability for any injury caused by the issuance, denial, suspension or revocation of a license. (N.J.S.A. 59:2-5) The commenter is also incorrect in his assertion that a person certified in CPR/First Aid is not immune from civil liability under the "Good Samaritan" law (N.J.S.A. 2A:62-1). The statute contains no such exception. The immunity applies to any individual rendering emergency care in good faith, including persons licensed to practice any method of treatment and members of volunteer first aid and emergency squads.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis and certification are not required because there are no Federal standards or regulations on motorcycle safety education courses. Rulemaking requirements are dictated by N.J.S.A. 27:5F-36 et seq.

Full text of the adoption follows:

CHAPTER 85

MOTORCYCLE SAFETY EDUCATION PROGRAM

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

13:85-1.1 Purpose and scope

The rules contained in this chapter implement the provisions of N.J.S.A. 27:5F-40 and regulate the administration of a motorcycle rider education course in the State of New Jersey.

13:85-1.2 Definitions

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

"Administrator" means a person in the Office of Highway Traffic Safety designated by the director to oversee the program.

"Class" means a group of people enrolled for training as participants under the program.

"Coordinator" means a person designated by a provider to fulfill certain administrative responsibilities and meet recordkeeping and reporting requirements for the particular service or function being provided.

"Course section" means the complete, scheduled set of training modules presented to a class in order to provide them with the specified curriculum activities necessary for satisfactory completion of the course in question.

"Director" means the Director of the Office of Highway Traffic Safety.

"Instructor" means a person certified by the Director to act as an instructor in a motorcycle rider education course.

"Motorcycle rider education" means education for motorcyle riders in safe motorcycle riding techniques and practices.

"MRC:ERC" means Motorcycle Rider Course/Experienced Rider Course—a motorcycle rider education course developed by the Motorcycle Safety Foundation intended for experienced motorcycle riders.

"MRC:IRC" means Motorcycle Rider Course/Intermediate Rider Course—a motorcycle rider education course developed by the Motorcycle Safety Foundation for motorcycle riders who have not ridden for a long period of time and wish to renew previously learned skills.

"MRC:RSS" means Motorcycle Rider Course/Riding and Street Skills—a motorcycle rider education course developed by the Motorcycle Safety Foundation to train novice, beginner or potential riders.

"Participant" means a person enrolled in a motorcycle rider education course approved by the Director.

"Program" means the New Jersey Motorcycle Rider Education Program using the most current curriculum prescribed by the Motorcycle Safety Foundation and adopted by the Office of Highway Traffic Safety pursuant to N.J.S.A. 27:5F-36.

"Provider" means a public or private educational institution approved by the director to offer the motorcycle rider safety education course.

"Range" means an area set aside for the operation of motorcycles as part of a course curriculum specified by the Motorcycle Safety Foundation and approved by the Director.

"Student tuition" means the tuition paid by an enrolled participant directly to the provider.

13:85-1.3 Adoption of program

Pursuant to authority granted under N.J.S.A. 27:5F-36, the Director hereby adopts and incorporates herein by reference the Motorcycle Safety Foundation rider's course, including all subsequent revisions and amendments thereto, as the program to be administered under these rules. The program would be delivered by providers to participants for a tuition approved by the Director. Copies of the program requirements may be obtained from the Administrator, Motorcycle Education Program, Office of Highway Traffic Safety, CN048, Trenton, NJ 08625-0048.

SUBCHAPTER 2. QUALIFICATIONS

13:85-2.1 Participants

(a) Persons enrolling in a MRC:RSS (Rider and Street Skills) shall:

1. Possess a valid motorcycle license or an endorsement issued by any state or a motorcycle operator learners permit;

2. Have the physical ability to operate a motorcycle;

3. Have the ability to balance a two-wheeled vehicle;

4. Have written, witnessed parental permission if under age 18; and

5. Wear the protective clothing specified in the course curriculum.

(b) Persons enrolling in a MRC:ERC (Experienced Rider Course) or MRC:IRC (Intermediate Rider Course) shall:

1. Possess a current, valid motorcycle license or endorsement issued by any state, or a motorcycle operator learner's permit and have successfully completed the MRC/RSS course;

2. Have possessed such a license or endorsement for a minimum of six months for riding experience;

3. Submit written, witnessed parental permission if under age 18 and have completed the MRC:RSS;

4. Have access to a street legal motorcycle and submit proof of ownership and insurance or owner's written permission to use said motorcycle in the course; and

5. Wear the protective clothing as specified in the course curriculum.

13:85-2.2 Providers

(a) Providers which desire to participate in the program shall submit to the Administrator an application on a form supplied by the Division to be approved by the Director, including any additional pertinent information when requested to do so by the Administrator. The application shall contain the address and a description of the location where the course(s) will be provided, including a diagram of the driving range; the name of the coordinator, instructors and other individuals involved in the provider's program; a brief description of the provider's history and interest in motorcycle rider education and safety; and a brief description of how the provider will implement the program. The provider's qualifications will be reviewed periodically and certification can be revoked for non-compliance with these rules or other good cause.

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(b) Registration of students will be the responsibility of the provider who shall collect student tuition approved by the Director. The Administrator will reimburse the provider a specified amount from the Motorcycle Safety Education Fund for each participant who attends the course and possesses a New Jersey license or endorsement or a New Jersey learner permit. Eligibility for reimbursement will be dependent upon a properly completed reimbursement coupon for each participant which shall include a driver's license or permit number on the face. Reimbursements will be limited to one per year per participant. Providers will not receive a reimbursement for a participant repeating the same level of instruction within the same year.

SUBCHAPTER 3. INSTRUCTORS

13:85-3.1 Qualifications

(a) Any person seeking to qualify for certification as an instructor shall apply in writing to the Director and shall:

1. Be the holder of a valid motorcycle operator's license or endorsement issued by any state for a minimum of two years;

2. Be the holder of a current Motorcycle Safety Foundation Certification as a motorcycle instructor;

3. Complete a New Jersey Criminal History Review Form and State and Federal Fingerprint Cards, together with a cashiers check, certified check or money order payable to the Division of State Police—SBI—in the amount specified in N.J.A.C. 13:59, and have no convictions for sexual assault, endangering the welfare of children or incompetent persons, arson, armed robbery, aggravated assault, kidnapping, murder, manslaughter or, within the past 10 years, violations of the Controlled Dangerous Substances Act;

4. Have no suspensions or revocations of driving privileges during the past two years;

5. Have no convictions for violating the provisions of N.J.S.A. 39:4-50 or comparable statutes from other jurisdictions during the past five years;

6. Have accumulated no more than four points assessed for motor vehicle offenses during the past two years;

7. Have at least two years of motorcycle riding experience; and

8. Within 90 days of hiring, obtain at applicant's own expense, a certification from a current accredited program for first aid and adult CPR.

(b) No certification fee shall be charged by the Director. A certification so issued shall be renewed in January of each year and will be valid during such period as the instructor continues to meet the requirements of (a)1 through 8 above.

SUBCHAPTER 4. FACILITIES AND EQUIPMENT

13:85-4.1 Facilities and equipment

(a) The facilities and equipment must conform to current course requirements set by the present Motorcycle Safety Foundation as well as meet all applicable local and state zoning, building, fire, health and safety regulations including a working telephone or two-way radio.

(b) The provider shall supply all materials, supplies and equipment as required by the MSF and any additional material, equipment as determined by the New Jersey Motorcycle Safety Program and/or local authorities.

(c) The provider is responsible for security and maintenance of all materials, records, supplies and equipment and for loss or damage not covered under N.J.A.C. 13:85-5.

SUBCHAPTER 5. INSURANCE

13:85-5.1 Provider coverage

Upon approval, each provider is covered as an additional insured under a blanket liability policy administered by a designee appointed by the Director.

13:85-5.2 Policy effect; release

(a) Insurance is in effect as long as an approved course is in session. The blanket policy protects both the state and the provider and all primary and assistant instructors, range aides and students participating in any provider sponsored MRC:RSS, MRC:IRC or MRC:ERC course conducted under the program.

(b) Providers shall require each participant to complete a Release, Waiver and Indemnification Statement, supplied by the Office of Highway Traffic Safety, which releases the State from any and all liability, loss, costs, claim and/or damage arising out of participation in any course conducted under the program.

SUBCHAPTER 6. PROGRAM REPORTING

13:85-6.1 Reporting

(a) Providers shall submit the following items to the Administrator:

1. Copies of all MRC:RSS/IRC/ERC rosters of participants, a class schedule and accident forms for each class section, 10 working days after the completion of any course; and

2. The Provider shall be responsible for completing and recording of any official reports required by other public or private agencies or any individuals as a result of any accident involving bodily injury or property damage that occurs while conducting an RSS, IRC or ERC class. The Provider shall submit a copy of these reports to the Director immediately.

SUBCHAPTER 7. TUITION

13:85-7.1 Tuition

From 1995, tuition is set at novice—$200.00; intermediate—$100.00; and advanced—$50.00. Thereafter, providers will have the opportunity to meet with the advisory committee, not more than once per year, for the purpose of establising a uniform tuition. Tuition will be established by January 1st for the following season. Tuition will remain constant for each training season. Notice of agreed upon tuition will be published in the New Jersey Register.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Notice Concerning Impending Expiration of N.J.A.C. 16:21 and 16:22

Take notice that N.J.A.C. 16:21, State Aid to Counties and Municipalities, and N.J.A.C. 16:22, Urban Revitalization, Special Demonstration and Emergency Projects, are scheduled to expire pursuant to Executive Order No. 66(1978) on August 6, 1995, and December 18, 1995, respectively. Both of these chapters pertain to the distribution of 1979 Transportation Bond Issue funds. The 1979 Transportation Bond Issue funds have all been appropriated by the Legislature and expended for the authorized transportation purposes. Subsequently, N.J.A.C. 16:21 and 16:22 are no longer necessary.

It is the intent of the Department not to administratively readopt N.J.A.C. 16:21 and 16:22 and to allow them to expire on their respective Executive Order No. 66(1978) chapter expiration dates. Any remaining executed agreements pertaining to 1979 bond funds will be interpreted within the context of whatever rules and regulations were in full force and effect at the time of the execution of the agreement.

Any questions pertaining to this notice may be addressed to Renee Rapciewicz, Deputy Administrative Practice Officer, 1035 Parkway Avenue, Trenton, NJ 08625, telephone (609) 530-2041.

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(a)

DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITIES AND RAILROAD ENGINEERING
Railroads
Adopted Recodification with Amendment: N.J.A.C. 14:8 as 16:23

Proposed: March 20, 1995 at 27 N.J.R. 1155(a).
Adopted: April 21, 1995 by W. Dennis Keck, Deputy Assistant Commissioner for Planning and Development.
Filed: May 11, 1995 as R.1995 d.278, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 48:2-1 et seq.
Effective Date: June 5, 1995.
Expiration Date: June 5, 2000.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the requirements of this rulemaking are dictated by State statutes and are not subject to any Federal requirements or standards.

Full text of the adopted rules originally found at N.J.A.C. 14:8 may be found at N.J.A.C. 16:23.

Full text of the adopted amendments follows:

CHAPTER 23

RAILROADS

SUBCHAPTER 1. TRACK SAFETY

Recodify existing N.J.A.C. 14:8-1.2 as 16:23-1.1 (No change in text.)

SUBCHAPTER 2. SERVICE

Recodify existing N.J.A.C. 14:8-2.1 through 2.8 as 16:23-2.1 through 2.8 (No change in text.)

16:23-2.9 Knowledge of physical characteristics of road

Enginemen in road service, on resuming duties after an absence of one year or more from the portion of the railroad over which they are expected to operate, shall be examined to ascertain whether they are qualified on the physical characteristics of the road over which they will operate. When the rules of a railroad permit firemen to operate engines under the supervision and responsibility of an engineman or otherwise, a fireman, before being allowed to operate an engine in road service, shall be qualified on the physical characteristics of the road over which they will operate and shall be subject to requalification after an absence of one year or more from the portion of the railroad over which he or she may be expected to operate an engine.

16:23-2.10 (No change in text.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route N.J. 152
Somers Point City and Egg Harbor Township, Atlantic County
Adopted Amendment: N.J.A.C. 16:28-1.42

Proposed: April 3, 1995 at 27 N.J.R. 1369(a).
Adopted: May 10, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: May 12, 1995 as R.1995 d.287, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.
Effective Date: June 5, 1995.
Expiration Date: May 7, 1998.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28-1.42 Route 152

(a) The rate of speed designated for the certain part of State highway Route 152, described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Atlantic County:

(1) City of Somers Point:

(A) Zone 1: 40 miles per hour between Bay Avenue and the City of Somers Point-Township of Egg Harbor corporate line (approximate mileposts 0.00 to 0.17).

(2) Township of Egg Harbor:

(A) Zone 1: 40 miles per hour between the City of Somers Point-Township of Egg Harbor corporate line and 1,300 feet east of Bay Avenue (approximate mileposts 0.17 to 0.24).

(B) Zone 2: 50 miles per hour beween 1,300 feet east of Bay Avenue and 500 feet west of Frontage Road (approximate mileposts 0.24 to 2.76).

(C) Zone 3: 40 miles per hour between 500 feet west of Frontage Road and the westerly abutment line of the John F. Kennedy Memorial Bridge over Risley Channel (approximate mileposts 2.76 to 3.16).

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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. 88
Lakewood Township, Ocean County
Adopted Amendment: N.J.A.C. 16:28A-1.44

Proposed: March 6, 1995 at 27 N.J.R. 823(a).
Adopted: April 24, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed April 28, 1995 as R.1995 d.261, **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: June 5, 1995.
Expiration Date: May 7, 1998.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:28A-1.44 Route 88
(a)-(c) (No change.)
(d) The certain parts of State highway Route 88 described in this subsection shall be designated as no stopping or standing zones, where stopping or standing is prohibited at certain times and hours. In accordance with N.J.S.A. 39:4-199, permission is granted to erect the appropriate signs.
1. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Lane Usage
Route U.S. 206
Lawrence Township, Mercer County
Adopted New Rule: N.J.A.C. 16:30-3.16

Proposed: March 20, 1995 at 27 N.J.R. 1126(a).
Adopted: April 24, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed April 28, 1995 as R.1995 d.262, **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: June 5, 1995.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
COMMENT: A comment letter, dated February 27, 1995, was received from William J. Guhl, Municipal Manager of Lawrence Township, rescinding their initial request for the N.J.D.O.T. to install a left turn lane at this intersection.

RESPONSE: Mr. Guhl was informed in a letter, dated April 24, 1995 from William E. Anderson, that since this condition was brought to the Department's attention, its field investigation determined the left turn lane to be warranted and, therefore, the Department is going to proceed with the initial request to install the left turn lane. The Department will continue to monitor this intersection for a traffic signal installation should conditions change.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:30-3.16 Route U.S. 206
(a) Turning movements of traffic on certain parts of State highway Route U.S. 206 described herein below are regulated as follows:
1. In Mercer County:
i. In Lawrence Township:
(1) Left lane for left turns only:
(A) From southbound on Route U.S. 206 to eastbound onto Darrah Lane (approximate milepost 47.1).

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Traffic and Parking
Department of Transportation Property
200 Stierli Court
Mt. Arlington Borough and Roxbury Township, Morris County
Adopted New Rule: N.J.A.C. 16:30-5.4

Proposed: March 6, 1995 at 27 N.J.R. 824(a).
Adopted: April 24, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: April 28, 1995 as R.1995 d.263, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-209 and 39:4-198.

Effective Date: June 5, 1995.
Expiration Date: May 7, 1998.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:30-5.4 Department of Transportation's Region 1 Facility
(a) The operator of a vehicle shall not park the vehicle in any portion of parking lot "A" constructed, owned and maintained at the Region 1 Facility of the New Jersey Department of Transportation unless such vehicle is registered with a parking permit issued by the Division of Support Services.
1. Applications for registration and parking permits shall be denied unless the names of those submitted are New Jersey Department of Transportation employees or are connected with the New Jersey Department of Transportation, in some capacity at the Region 1 Facility.
2. Parking permits shall be serially numbered and shall indicate parking area. The permit will be designed for pasting and shall be pasted upon the inside of the rear window.
3. No person shall counterfeit a parking permit or making a substitute or temporary permit, or use such a permit.
4. To be valid, the parking permit must be on the car at all times while parking in designated parking areas.

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5. Records of all permits issued shall be kept on file at the Office of the Division of Support Services.

6. On special or emergency occasions, any parking area may be designated as a closed area to permit holders. On such occasions, proper notice will be given to permit holders as soon as possible and such notice will designate, providing there is space, another area available to them during such time.

7. Parking permits shall be revoked by the Office of the Division of Support Services at any time when the employee fails to comply with this rule.

8. Department employees, in violation of these rules, may be subject to Department disciplinary action as provided for in the Department Policies and Procedures.

9. Department employees, not assigned to the Region 1 Facility of the New Jersey Department of Transportation, shall sign in and this "signing in process" shall serve as a temporary one-day registration.

10. In accordance with N.J.S.A. 39:4-209, any person in violation of this section will be subject to a fine of not less than $1.00 nor more than $15.00; provided, however, that any person who shall violate any of said regulations concerning the altering, counterfeiting or misuse of parking permits shall be subject to a fine of not more than $50.00.

(b) The operator of a vehicle shall conform to the following various traffic regulations in parking area "A" constructed, owned and maintained at the Region 1 Facility of the New Jersey Department of Transportation:

1. The operator of a vehicle shall park said vehicle between the painted lines in the spaces marked, and they shall not park the vehicle in any other space not so marked.

2. Reserved parking spaces and handicapped spaces may be established within parking area "A," including areas for customer/visitor parking and shall be properly marked by signs or markings. The operator of any vehicle using such areas shall obey all reserved signs or markings.

3. The operator of a vehicle shall not stop or stand the vehicle in the driveways or roadways marked with signs or any portion of parking area "A" so as to interfere with the free and orderly movement of vehicles entering or leaving parking area "A."

4. The operator of a vehicle upon entering, remaining in or leaving parking area "A" shall obey all traffic control devices and all Department designated officers that may be on duty at the time.

5. The Department designated officer on duty in parking area "A" may control the traffic and parking. All drivers of vehicles shall obey his or her orders and directions, notwithstanding anything contained in this section.

6. Vehicles parked in restricted areas without proper identification or in violation of any portion of this regulation shall be towed, at the owner's expense, when the enforcing authority deems it necessary in the interest of traffic safety.

(c) The operator of a vehicle shall conform to the following various traffic regulations in parking area "B" constructed, owned and maintained at the Region 1 Facility of the New Jersey Department of Transportation designated as a "Park and Ride."

1. The operator of a vehicle shall park said vehicle between the painted lines in the spaces marked, and they shall not park the vehicles in any other space not so marked.

2. Reserved parking spaces and handicapped parking spaces may be established within parking area "B," including areas for customer/visitor parking and shall be properly marked by signs or markings, and the operator of any vehicle using such areas shall obey all signs or markings.

3. The operator of a vehicle shall not stop or stand the vehicle in the driveways or roadways marked with signs in parking area "B" so as to interfere with the free and orderly movement of a vehicle entering or leave parking area "B."

4. The operator of a vehicle upon entering, remaining or leaving parking area "B" shall obey all traffic control devices and all Department designated officers that may be on duty at the time.

5. The Department-designated officer on duty in parking area "B" may control the traffic and parking. All drivers of vehicles shall obey his or her orders and directions, notwithstanding anything contained in these rules.

6. Vehicles parked in restricted areas without proper identification or in violation of any portion of this regulation shall be towed at the owner's expense when the enforcing authority deems it necessary in the interest of traffic safety.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Miscellaneous Traffic Rules
Route I-295, Scenic Overlook (Northbound and Southbound)
Hamilton Township, Mercer County
Adopted New Rule: N.J.A.C. 16:30-11.3

Proposed: March 6, 1995 at 27 N.J.R. 825(a).

Adopted: April 24, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: April 28, 1995 as R.1995 d.264, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 29:4-138.1, 39:4-198, 39:4-199 and 39:4-208.

Effective Date: June 5, 1995.

Expiration Date: May 7, 1998.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

Full text of the adoption follows:

16:30-11.3 Route I-295 Scenic Overlook (northbound and southbound) at approximate mileposts 58.2 to 58.5

(a) Under the provisions of N.J.S.A. 39:4-208, the following provisions for the control of traffic upon the roadways of the Route I-295 Scenic Overlook at approximate mileposts 58.2 to 58.5 are hereby adopted:

1. In Mercer County:

i. In Hamilton Township:

(1) No stopping or standing:

(A) No person shall stop or stand a vehicle except in designated areas and between the painted lines.

(2) Handicapped parking:

(A) Locations as indicated on Site Plan Section 7J Attachments, No. 5 and No. 6, incorporated herein by reference as an appendix to this section, shall be for handicapped parking. All stalls shall be 12 feet wide and signed with R7-8 and R7-8(P) (Reserved Parking Sign and Penalty Plate).

(3) Vehicle weight limit:

(A) The use of the Route I-295 Scenic Overlook is hereby prohibited to all vehicles over five tons G.V.W. (10,000 pounds), except that the following vehicles are exempt from the provisions of this restriction:

(I) Emergency vehicles; and

(II) Maintenance or service vehicles actually engaged in the inspection, maintenance or reconstruction of the Route I-295 Scenic Overlook.

(4) Closing of the Route I-295 Scenic Overlook:

(A) No person shall enter upon the area known as the Route I-295 Scenic Overlook between the hours of dusk and dawn.

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APPENDIX to N.J.A.C. 16:30-11.3
SITE PLAN SECTION 7J
ATTACHMENTS NO. 5 and NO. 6

(OAL Note: The Appendix documents incorporated by reference are not reproducible herein, but may be examined by contacting the Office of Administrative Law, Quakerbridge Plaza Bldg. 9, CN 049, Trenton, NJ 08625.)

(a)

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

Turn Prohibition
Route U.S. 130
Mansfield Township, Burlington County
Adopted New Rule: N.J.A.C. 16:31-1.22

Proposed: March 6, 1995 at 27 N.J.R. 826(a).
Adopted: April 24, 1995 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: April 28, 1995 as R.1995 d.265, **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: June 5, 1995.
Expiration Date: May 7, 1998.

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

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because N.J.S.A. 27:1A-1 et seq. governs the subject of this rulemaking and there is no Federal requirement or standard that affects the subject of this rulemaking.

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) (No change.)

(2) Along Route U.S. 130 southbound at:

(A) (No change.)

(B) Mershon Concrete driveway, Mansfield Township (approximate milepost 52.45).

Recodify existing (B)-(D) as (C)-(E) (No change in text.)

(3) (No change.)

ii.-iii. (No change.)

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Sales and Use Tax
Retention of Certificates; Inspection
Adopted Amendment: N.J.A.C. 18:24-10.6

Proposed: February 6, 1995 at 27 N.J.R. 474(a).
Adopted: April 27, 1995 by Richard D. Gardiner, Director, Division of Taxation.
Filed: May 1, 1995 as R.1995 d.267, **with substantive and technical changes** not requiring additional public notice and comments (See N.J.A.C. 1:30-4.2).
Authority: N.J.S.A. 54:50-1
Effective Date: June 5, 1995.
Expiration Date: June 4, 1998.

Summary of Public Comments and Agency Responses:

Written comment was received as follows:

COMMENT: Susan A. Feeney of the Taxation Section, State Tax Procedure and Liaison Committee, of the New Jersey State Bar Association expressed concerns that (1) out-of-State vendors would be burdened with the obligation to ascertain whether their out-of-State customers were required to be registered in New Jersey and that (2) the rule should clarify that "delivery by common carrier is not defective."

RESPONSE: The rule outlines the circumstances in which an out-of-State exemption certificate may be accepted as a basis for a resale exemption. An existing rule, N.J.A.C. 18:24-10.3, already explains that a seller "who accepts in good faith any exemption certificate which upon its face discloses a proper basis for exemption is relieved of any liability for collection or payment of tax upon transactions covered by the certificate." This "good faith" limitation is explicitly mentioned in the unchanged subsection (a) of N.J.A.C. 18:24-10.6, governing the retention period for certificates, and was intended to be implicit in the amended section regarding acceptance of out-of-State certificates. Nevertheless, for the benefit of the public and to remove all doubt as to its intent, the Division has amended the rule to reiterate the "good faith" limitation.

Clarification of the validity of common carrier delivery is unnecessary because the rule does not change the Division's historic position on common carrier delivery. The rule simply clarifies that in order for an out-of-State resale certificate to be acceptable, the purchaser presenting the certificate may not take delivery of the property at the location of sale in New Jersey.

Summary of Agency-Initiated Changes:

On its own initiative, the Division has amended the rule to clarify that out-of-State certificates are not acceptable as evidence of an out-of-State purchaser's resale exemption, if the purchaser claiming the resale exemption (1) is required to be registered in New Jersey, or (2) takes possession and title to the property at the location of sale in New Jersey. In making this amendment, the Division is simply correcting an inadvertent drafting error in the published proposal.

As explained in the impact statement, the rule is being amended in order to clarify the provisions of N.J.S.A. 54:32B-15 in light of the New Jersey Tax Court's decision in *Steelcase, Inc. v. Director, Div. of Taxation,* 13 *N.J. Tax* 182 (1993). The *Steelcase* ruling was limited to the circumstances of "drop shipment, three-party transactions—sales by an out-of-State vendor to out-of-State dealers whose orders include directions to ship the products to the dealers' customers in New Jersey." *Id.* at 188.

The out-of-State dealer who purchased merchandise from Steelcase for shipment to its customer in New Jersey had no "nexus" with New Jersey and therefore was not required to be registered with the Division. It did not pick up or receive shipment of the merchandise in New Jersey; instead it requested that Steelcase ship the merchandise directly to its New Jersey customer. The court noted, "Although a transfer of possession may occur in New Jersey, it is not between seller and purchaser. In reality, it is between the non-nexus, out-of-State dealer and the New Jersey purchaser." *Id.* at 194.

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As the *Steelcase* ruling makes clear, evidence other than a New Jersey resale certificate may be permitted in drop-shipment transactions when both of two conditions exist: (1) the immediate purchaser, who purchases the merchandise for resale, has no nexus with New Jersey and (2) the immediate purchaser is not the party that takes possession of the merchandise at the taxable situs in New Jersey. Thus, the minor change now being made simply corrects the proposed amendment in order to ensure its consistency with *Steelcase*.

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

18:24-10.6 Retention of certificates; inspection

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

(c) Where a certificate is not made available for inspection on or before that time, the seller or lessor must prove to the satisfaction of the Director, by means of evidence other than certification of the purchases, that the sale or lease in question is, in fact, exempt. Whenever the sale for resale exemption is claimed by an unregistered vendor, the properly completed and executed resale certificate of another state***, accepted in good faith by the seller,*** is deemed evidence of exemption; *[provided, however, that]* ***unless***:

1. The person to whom the sale was made and who issued the certificate was *[not]* required to be registered in New Jersey under N.J.S.A. 54:32B-2(i) at the time of sale; or

2. The person to whom the sale was made *[did not take]* ***took*** delivery of the property at the sale*[s]* location in New Jersey.

(d) (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications

Gaming Related Casino Service Enterprise License Fee; Casino Employee License Fees; Scope of Subchapter; Modification of License at Renewal; Duration of Renewed Licenses

Persons Doing Business with Casino Licensees Duration of Licenses; Renewal

Adopted Amendments: N.J.A.C. 19:41-9.8, 9.14, 14.1, 14.4 and 14.6; and 19:51-1.8

Proposed: March 20, 1995 at 27 N.J.R. 1171(a).

Adopted: May 10, 1995, by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: May 12, 1995 as R.1995 d.282, **without change**.

Authority: N.J.S.A. 5:12-63c and d; 69a, 70a and e and 92.

Effective Date: June 5, 1995.

Expiration Date: April 13, 2000, N.J.A.C. 19:41;
August 15, 1996, N.J.A.C. 19:51.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement has indicated that it does not object to the proposed amendments. However, the Division suggested that an additional rule or rules be proposed defining the new category of casino employee called a "casino service employee" and listing the positions which require a casino service employee registration.

RESPONSE: The Division's suggestion is beyond the scope of this proposal. However, the Commission expects to address the issue of casino service employee in the future.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Casino Control Commission are directly dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

19:41-9.8 Gaming related casino service industry enterprise license fee

(a) In accordance with subsections 92a and b of the Act, all casino service industry enterprises offering goods and services which directly relate to casino, simulcast wagering or gaming activity, including gaming equipment manufacturers, suppliers and repairers, schools teaching gaming and dealing techniques, and casino security services, shall meet the standards established for casino key employees in order to be licensed. Such a license shall be issued for an initial term of two years and for a term of four years for all subsequent renewals.

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

19:41-9.14 Casino employee license fees

(a) Under section 90 of the Act, no person may be employed as a casino employee unless such person is the holder of a valid casino employee license.

(b) Under subsection 94d of the Act, a casino employee license shall be issued for three years and be renewable for four year periods thereafter. The issuance fee for such a three year license shall be $350.00. The renewal fee for such a four year license shall be $250.00.

(c) Any person who applies for the issuance of a casino employee license pursuant to (b) above may pay the appropriate application fee in accordance with the following schedule upon payment of an additional fee of $10.00 to cover the cost of processing the payment plan:

1. An applicant for the issuance of a casino employee license may submit an initial payment of $275.00 upon filing of the application and a subsequent payment of $85.00 within 30 days from the date that the license is granted or denied or the application is withdrawn, or upon the prior issuance of the license.

(d) The Commission may waive the fee in (b) above for an applicant for initial licensure if:

1.-2. (No change.)

19:41-14.1 Scope of subchapter; effect of expiration of license

(a) This subchapter shall govern applications for the renewal of casino key employee and casino employee licenses.

(b) (No change.)

19:41-14.4 Modification of license at renewal

(a) An applicant for the renewal of a casino key employee license may, in lieu of renewing his or her current license, apply for a modification of his or her current license at renewal to a casino employee license.

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

19:41-14.6 Duration of renewed licenses

(a) (No change.)

(b) Casino key employee licenses shall be renewed for a term of four years.

19:51-1.8 Duration of licenses; renewal

(a) Licensure pursuant to N.J.S.A. 5:12-92a is granted for an initial term of two years and for a term of four years for all subsequent renewals; provided, however, that the Commission shall reconsider the granting of such a license at any time at the request of the Division. Licensure pursuant to N.J.S.A. 5:12-92c and 5:12-102 is granted for an initial term of three years and for a term of four years for all subsequent renewals. An application for renewal of a license shall be filed no later than 120 days prior to the expiration of that license.

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

(e) Any enterprise which is not required to, and chooses not to, renew its casino service industry enterprise license pursuant to (c) above shall not transact business with any casino licensee or applicant or any employee or agent thereof upon the expiration of such license unless a completed vendor registration form is filed on its behalf by a casino licensee or applicant in accordance with N.J.A.C. 19:43-10.4.

(f) (No change.)

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(a)

CASINO CONTROL COMMISSION

Applications

Forms; Labor Organization Registration Statement; Labor Organization Individual Disclosure Form Information; Application for the Issuance of Employee Licenses or Registrations and Natural Person Qualification

Labor Organization Registration; Definitions; Registration Required; Exemption; Registration Statement; Application; Renewal; Continuing Duty to Disclose; Federal Reports Exception; Qualification of Officers, Agents and Principal Employees; Qualification Procedure; Waiver of Disqualification Criteria; Interest in Casino Hotel or Casino Licensee; Failure to Comply

Adopted Amendments: N.J.A.C. 19:41-7.1A, 12.1 through 12.7, 12.9, 12.11 and 12.12

Adopted Repeal: N.J.A.C. 19:41-12.8 and 12.10

Adopted New Rules: N.J.A.C. 19:41-5.13, 5.14 and 12.4A

Proposed: March 20, 1995 at 27 N.J.R. 1165(a).

Adopted: May 10, 1995, by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: May 8, 1995 as R.1995 d.283, **without change**.

Authority: N.J.S.A. 5:12-63c, 69a and 93.

Effective Date: June 5, 1995.

Expiration Date: April 13, 2000.

Summary of Public Comments and Agency Responses:

COMMENTS: Comments on the proposal were received from Claridge Casino Hotel and Casino, Inc. (Claridge) and Greate Bay Hotel and Casino, Inc. d/b/a Sands Hotel and Casino (Sands). Both Claridge and Sands support the proposed repeal and the adoption of the proposed new rules and amendments.

RESPONSE: Accepted.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rulemaking requirements of the Casino Control Commission are directly dictated by the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

19:41-5.13 Labor Organization Registration Statement

(a) A Labor Organization Registration Statement shall be in a format prescribed by the Commission and may require the labor organization, union, or affiliate to provide the following information:

1. The name of the registrant as shown on its charter or in its constitution;

2. The current and former business addresses of the registrant, including the address of any office where matters pertaining to employees of a casino license will be conducted;

3. The names of the registrant's parent organization and all affiliates of the registrant or its parent organization;

4. The nature of the actual or probable involvement of any affiliate which represents or is seeking to represent employees who are employed in a casino hotel, casino or casino simulcasting facility by a casino licensee, or which is involved or seeking to be involved in the control or direction of such representation;

5. Financial data, including information concerning any financial interests held in a casino hotel, casino, casino simulcasting facility or casino licensee;

6. The name, address and, where applicable, date of birth, title or position and authority or responsibility, of the following persons or entities:

i. Any pension or welfare system maintained by the registrant;

ii. Each officer and agent of any pension or welfare system maintained by the registrant;

iii. Each officer and officer-elect of the registrant;

iv. Each agent authorized to represent the registrant; and

v. Each principal employee of the registrant.

(b) In addition to the information in (a) above, a completed Labor Organization Registration Statement may include the following:

1. A notarized affidavit of truth, which shall be dated and signed by the registrant's president or chief executive officer, treasurer and secretary;

2. A certification of truth, dated and signed by the registrant's attorney of record;

3. A Release Authorization directing 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 registrant as requested by the Commission or the Division;

4. A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the registrant from any disclosure or publication of information acquired during the investigation process, in accordance with N.J.S.A. 5:12-80c; and

5. Consent to inspection, searches and seizures and the supplying of handwriting exemplars, in accordance with N.J.S.A. 5:12-80c.

19:41-5.14 Labor Organization Individual Disclosure Form

(a) A Labor Organization Individual Disclosure 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. Title or position with the labor organization;

3. Date and place of birth;

4. Physical description;

5. Current address and residence history;

6. Social security number, which information is voluntarily provided in accordance with section 7 of the Privacy Act, 5 U.S.C. 552a;

7. Citizenship and, if applicable, information concerning resident alien status;

8. Telephone number at current place of employment;

9. Employment history, including all positions held with a labor organization, union or affiliate, whether or not compensated;

10. Licenses or other approvals held or applied for which are required to participate in any lawful gambling operation in this State or any jurisdiction;

11. Civil, criminal and investigatory proceedings in any jurisdiction as follows:

i. Convictions for crimes or disorderly persons offenses; and

ii. Convictions for contempt for refusal to testify or cooperate with any legislative investigatory body or other official investigatory body; and

12. Financial data, including information concerning any financial interests held in a casino hotel, casino, casino simulcasting facility or casino licensee.

(b) In addition to the information in (a) above, a completed Labor Organization Individual Disclosure Form may include the following:

1. The name, address, occupation and phone number of references;

2. A signed, dated and notarized affidavit of truth;

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 officer, agent or principal employee as requested by the Commission or the Division; and

4. A waiver of liability as to the State and its instrumentalities and agents for any damages resulting to the officer, agent or principal employee from any disclosure or publication of information acquired during the investigation process, in accordance with N.J.S.A. 5:12-80c.

19:41-7.1A Application for the issuance of employee licenses or registrations and natural person qualification

(a) An application for the initial issuance of an employee license or registration or for individual qualification shall include the following:

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1. A completed original and one photocopy of the appropriate disclosure form, as follows:

i.-v. (No change.)

vi. An applicant required to qualify pursuant to subsections 92a and b of the Act by virtue of his or her position with a casino service industry enterprise or gaming school shall file a PHD-1A as set forth in N.J.A.C. 19:41-5.2;

vii. An applicant required to qualify pursuant to subsection 92c of the Act by virtue of his or her position with a casino service industry enterprise shall file a QDF as set forth in N.J.A.C. 19:41-5.9. If such enterprise is required to be licensed pursuant to N.J.A.C. 19:51-1.2A(f), the applicant shall also provide two copies of his or her Federal tax returns and related documents; and

viii. An applicant required to qualify pursuant to N.J.S.A. 5:12-93 by virtue of his or her position with a labor organization, union or affiliate shall file a Labor Organization Individual Disclosure Form as set forth in N.J.A.C. 19:41-5.14.

2.-5. (No change.)

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

19:41-12.1 Definitions

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

. . .

"Labor organization agent" or "agent" means any person, whether compensated or not, who is authorized or allowed to represent a labor organization in any employment matter relating to employees who are employed in a casino hotel, casino or casino simulcasting facility by a casino licensee, or who undertakes on behalf of the labor organization to promote, facilitate or otherwise influence the relations between the labor organization and the casino licensee.

. . .

"Labor organization principal employee" or "principal employee" means any employee of a labor organization who, by reason of remuneration or of a management, supervisory or policy making position exercises any authority, discretion or influence with regard to any matter relating to employees who are employed in a casino hotel, casino or casino simulcasting facility by a casino licensee.

19:41-12.2 Registration required

Each labor organization, union or affiliate representing or seeking to represent employees who are employed in a casino hotel, casino, or casino simulcasting facility by a casino licensee shall register with the Commission annually in accordance with N.J.S.A. 5:12-93 and the rules of the Commission.

19:41-12.3 Registration exemption; standards and findings

(a) The Commission may in its discretion exempt any labor organization, union, or affiliate from annual registration in accordance with the requirements of N.J.S.A. 5:12-93a.

(b) (No change.)

19:41-12.4 Initial filing of registration statement

(a) Within 30 days of the date on which it begins organizing activities directed at the employees who are employed in a casino hotel, casino or casino simulcasting facility by a casino licensee, or within such additional time as the Commission may, upon a showing of good cause, permit, a labor organization, union or affiliate shall file with the Commission an application for labor organization registration in accordance with N.J.A.C. 19:41-12.4A.

(b) For purposes of this section, organizing activities shall include, without limitation, soliciting membership by means of any direct personal contact, or any public notices such as the posting or distribution of fliers, posters or advertisements.

19:41-12.4A Application for initial and renewal of labor organization registration

(a) An application for initial or renewal labor organization registration shall consist of the fee specified in N.J.A.C. 19:41-9.10 and a completed original and one copy of the following:

1. A Labor Organization Registration Statement as set forth in N.J.A.C. 19:41-5.13; and

2. Any Labor Organization Individual Disclosure Forms as set forth in N.J.A.C. 19:41-5.14 required pursuant to N.J.A.C. 19:41-12.9.

19:41-12.5 Duration of registration; renewal

An initial labor organization registration shall be for a period of one year from the date on which the initial Labor Organization Registration Statement is accepted for filing by the Commission. Subsequent Labor Organization Registration Statements shall be filed annually pursuant to N.J.A.C. 19:41-12.4A no later than 120 days prior to the expiration of the current registration period.

19:41-12.6 Continuing duty to disclose

Every registered labor organization shall be under a continuing duty to promptly disclose any change in the information contained in the Labor Organization Registration Statement set forth in N.J.A.C. 19:41-5.13 or any information otherwise requested by the Commission or the Division.

19:41-12.7 Federal reports exception

Notwithstanding the reporting requirements imposed by N.J.S.A. 5:12-93 and the rules of the Commission, no labor organization, union, affiliate or person shall be required to furnish any information which is included in a report filed by any labor organization, union, affiliate or person with the Secretary of Labor pursuant to 29 U.S.C. Section 431, et seq. (Labor-Management Reporting and Disclosure Act) or 29 U.S.C. Section 1001 et seq. (Employee Retirement Income Security Act) if a copy of such report, or if the portion thereof containing such information, is furnished to the Commission pursuant to the aforesaid Federal provisions.

19:41-12.8 (Reserved)

19:41-12.9 Officers, agents and principal employees; initial and renewal filing requirements

(a) Every officer, agent and principal employee of a labor organization, union or affiliate required to register with the Commission pursuant to N.J.S.A. 5:12-93 and the rules of the Commission shall file with the Commission a completed original and one copy of a Labor Organization Individual Disclosure Form as set forth in N.J.A.C. 19:41-5.14.

(b) Notwithstanding (a) above, a Labor Organization Individual Disclosure Form need not be filed by an officer of a national or international labor organization who exercises no authority, discretion or influence over the operation of such labor organization with regard to any employment matter relating to employees who are employed in a casino hotel, casino or casino simulcasting facility by a casino licensee provided that the Commission or the Division may direct such officer to file such form or to provide any other information in the same manner and to the same extent as may be required of any other officer of a labor organization which is required to register pursuant to N.J.S.A. 5:12-93.

(c) Each officer, agent or principal employee required to file a Labor Organization Individual Disclosure Form shall do so initially at the time the pertinent labor organization, union or affiliate applies or should apply for registration, or within 30 days of the date on which the individual is elected, appointed or hired, whichever is later, or within such additional time as the Commission may, upon a showing of good cause, permit.

(d) Each individual who has filed an initial Labor Organization Individual Disclosure Form shall annually file with the Commission an updated original and one copy of a Labor Organization Individual Disclosure Form at the time the pertinent labor organization files for renewal of its registration pursuant to N.J.A.C. 19:41-12.4A.

(e) Notwithstanding the requirements of N.J.S.A. 5:12-93 and this section, the Commission may waive any disqualification criterion of N.J.S.A. 5:12-86 with respect to any officer, agent or principal employee of a labor organization, union or affiliate in accordance with the standards set forth in N.J.S.A. 5:12-93b.

19:41-12.10 (Reserved)

19:41-12.11 Interest in casino hotel or casino licensee prohibited

In accordance with N.J.S.A. 5:12-93c, neither a labor organization, union or affiliate nor its officers and agents not otherwise individually licensed under the Act and employed by a casino licensee may hold any

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financial interest whatsoever in the casino hotel, casino, casino simulcasting facility or casino licensee whose employees they represent.

19:41-12.12 Failure to comply; consequences

(a) The Commission may impose any sanction permitted by the Act including the imposition of fines or the revocation of any registration, if:

1. A labor organization, union or affiliate fails to properly register with the Commission pursuant to N.J.A.C. 19:41-12.4 and 12.5 or fails to provide all information requested by the Commission or Division in accordance with the provisions of the Act or the rules of the Commission;

2. Any officer, agent or principal employee of such labor organization, union or affiliate has been found disqualified by the Commission in accordance with the provisions of the Act or the rules of the Commission;

3. The labor organization, union, affiliate or any officer or agent thereof holds a prohibited interest in a casino hotel, casino, or casino simulcasting facility, or casino licensee; or

4. An officer, agent or principal employee of a labor organization, union or affiliate fails to properly register with the Commission pursuant to N.J.A.C. 19:41-12.9 or fails to provide all information requested by the Commission or Division in accordance with the provisions of the Act or the rules of the Commission.

(a)

CASINO CONTROL COMMISSION

Keno
Accounting and Internal Controls
Gaming Equipment
Rules of the Games

Adopted New Rules: N.J.A.C. 19:45-1.47 through 1.51 and 19:47-15

Adopted Amendments: N.J.A.C. 19:40-1.2; 19:41-1.3; 19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33 and 1.46; and 19:46-1.5, 1.20, 1.33, 1.34 and 1.35

Proposed: June 6, 1994 at 26 N.J.R. 2218(a).

Adopted: May 10, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: May 12, 1995 as R.1995 d.285, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with N.J.A.C. 19:45-1.11 and 1.12 Alternative B not being adopted.**

Authority: N.J.S.A. 5:12-5, 69(e), 70(f) and (j), 99 and 100(e).

Effective Date: June 5, 1995.

Expiration Dates: August 15, 1999, N.J.A.C. 19:40
April 13, 2000, N.J.A.C. 19:41
August 15, 1997, N.J.A.C. 19:45
April 15, 1998, N.J.A.C. 19:46
April 15, 1996, N.J.A.C. 19:47.

Agency Note: Subsequent to the publication of the original proposal concerning the game of keno (26 N.J.R. 115(a), January 3, 1994), the Commission approved the adoption of two proposals that were inadvertently omitted in two sections of the keno amendments that were reproposed on June 6, 1994, at 26 N.J.R. 2218(a). Accordingly, changes are being made at the adoption of the reproposal to reflect the actual text of N.J.A.C. 19:41-1.3 (see 26 N.J.R. 1538(b), April 4, 1994, concerning citizenship requirements for employees) and N.J.A.C. 19:46-1.5 (see 26 N.J.R. 1373(b), March 21, 1994, concerning the use of match play coupons).

In addition, there were two proposals published by the Commission prior to the publication of the keno reproposal that were subsequently adopted by the Commission and were therefore not included in the text of the reproposal. The first of these adoptions concerned the repurchase of cash equivalents (see 26 N.J.R. 3893, September 19, 1994) and requires a correction to the title of N.J.A.C. 19:45-1.25. The second adoption concerned the manufacture and use of slot tokens and prize tokens (see 26 N.J.R. 4089(a), October 3, 1994) and requires changes upon adoption of the reproposal to the amendments in N.J.A.C. 19:40-1.3 (moves the definition of "casino check" from N.J.A.C. 19:45-1.1 to 19:40-1.2), N.J.A.C. 19:45-1.15 (modifes introductory language in paragraphs under subsection (c) and adds (c)5viii), N.J.A.C. 19:45-1.46 (adds subsection (p) concerning prize tokens), N.J.A.C. 19:46-1.5 (makes substantial changes to delete all text concerning slot tokens) and N.J.A.C. 19:46-1.20 (adds slot and prize tokens to the lists contained therein.

Finally, please note that the adoption oat 26 N.J.R. 4089(a) concerning slot and prize tokens also resulted in the complete revision of N.J.A.C. 19:46-1.33. Accordingly, the amendments to that section that were included in the keno reproposal have been revised at adoption to reflect their appropriate placement in the current text of that section (some of these amendments have simply been eliminated since they addressed non-redeemable slot tokens, a concept that was deleted in the revisions to N.J.A.C. 19:46-1.33). In addition, reproposed amendments to portions of the previous version of N.J.A.C. 19:46-1.5 that were moved to N.J.A.C. 19:46-1.34 and 1.35 by the adoption at 26 N.J.R. 4089(a) have also been moved to those sections upon adoption of the keno reproposal (see N.J.A.C. 19:46-1.34(b) and (c) and 1.35(f)).

Summary of Public Comments and Agency Responses:

The definition of "keno payout" was amended to include payments by casino check so that the definition would be consistent with the definition of "casino check" and the provisions of N.J.A.C. 19:45-1.25(f).

N.J.A.C. 19:45-1.1A was amended to clarify that a casino licensee may establish a separate gaming day for slot machines, table games and keno.

For consistency with N.J.A.C. 19:45-1.50, N.J.A.C. 19:45-1.46 was revised to delete the reference to exchanging coupons for a like amount of cash.

N.J.A.C. 19:45-1.47(h) was revised to delete the reference to counting the contents of the drawer at the keno work station. This section was inconsistent with the sections of the regulations which permit keno supervisors to prepare drawers at a secure area in the keno booth.

N.J.A.C. 19:45-1.49(e) and (f) were revised to delete the requirement of using a sealed envelope or container if the fill was prepared by the keno supervisor from funds in the keno booth.

N.J.A.C. 19:47-15.3(e) was revised to make it clear how the 30 percent house advantage would be implemented.

N.J.A.C. 19:47-15.5(a) was revised to make it clear that the program to operate the random number generator must be unique to the State of New Jersey and that the winning numbers must be documented by the random number generator.

N.J.A.C. 19:47-15.5(g) was revised to only require notification if keno boards or video monitors were placed in areas other than on the casino floor or in the casino simulcast facility.

N.J.A.C. 19:47-15.6(d) was revised to permit unclaimed winning keno funds to be paid to the Casino Revenue Fund. This option is consistent with the intent of returning the unclaimed funds to the public. Senior citizens of New Jersey will benefit from the funds being paid to the Casino Revenue Fund.

Summary of Public Comments and Agency Responses:

COMMENT: Greate Bay Hotel and Casino, t/a the Sands Hotel and Casino (Sands), Trump's Castle Associates (Trump's Castle) and Resorts International Hotel, Inc. (Resorts) support the adoption of Alternative B regarding keno reporting to the casino accounting department.

RESPONSE: Rejected. The Commission believes that the adoption of Alternative B could compromise the independence of the casino accounting department and create an incompatible function whereby the casino accounting department would be called upon to audit gaming documents generated by its own department. Resorts acknowledges this incompatible function in its comment letter, but suggest that a "Chinese wall" type of structure be permitted. While this may be "less incompatible," it is extremely important that the integrity and independence of the auditing structure be without any incompatible functions.

COMMENT: Sands and Trump's Castle suggest that a keno supervisor be permitted to enter the amount of the keno fill into the computer system.

RESPONSE: Accepted. The intent of having the information input into the system is not compromised by permitting the keno supervisor to do so.

COMMENT: Resorts and Boardwalk Regency Corporation, t/a Caesars Atlantic City (Caesars) suggests that the segregated area maintained by the keno supervisor for preparing drawers, fills and credits not be maintained on an imprest basis.

RESPONSE: Rejected. In order to identify overages and shortages expeditiously and to a particular individual, all cashiering funds on the casino floor are required to be maintained on an imprest basis.

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COMMENT: Resorts and Caesars believe that keno writer overages should not be reported as gross revenue as such overages are keno writer errors and not from the results of gaming activity.

RESPONSE: Rejected. Since there is a potential for a difference in the amount of revenue calculated by the paperwork generated by the keno writer and the amount calculated by the keno computer system, the regulations must address how to handle that difference. In fact, as demonstrated during the experiment of keno, there were several instances that the figures did not agree. Therefore, so that the State of New Jersey is not penalized when these figures do not agree, it should receive the larger amount. However, N.J.A.C. 19:45-1.33(l) permits the casino to pay gross revenue tax on the smaller figure if the casino can adequately explain and document the reason for said difference and the Commission approves the adjustment. Again, during the experiment, the casinos in several instances were able to satisfactorily explain the difference, and therefore, were able to pay gross revenue on the smaller figure.

COMMENT: Since keno writers can work at several different work stations during the day and their keno drawer is on an imprest basis, Caesars suggests that revenue be reported by keno writer instead of keno work station.

RESPONSE: Accepted. The intent of properly reporting revenue is satisfied if records are maintained by the keno writer.

COMMENT: Caesars requests that the keno manager be permitted to function simultaneously as a simulcast counter manager.

RESPONSE: Rejected at this time. The Commission has attempted to keep the function of simulcasting wagering separate from gross revenue activities. However, it will continue to monitor these operations and may pursue a regulation amendment, if appropriate in the future.

COMMENT: Caesars requests that the casinos be permitted to use keno balls and a blower device in order to select the winning numbers.

RESPONSE: Rejected. The Commission believes that the necessary controls and accounting procedures for keno balls would be too burdensome.

COMMENT: Caesars requests that casinos be permitted to utilize keno runners for placing wagers for patrons from areas off the casino floor.

RESPONSE: Rejected at this time. Legal and operational concern regarding the use of runners is beyond the scope of this proposal. The Commission will further review this proposal and propose the necessary regulations, if appropriate.

COMMENT: The Division of Gaming Enforcement (Division) recommends that the use of the term "for a keno ticket" regarding the exchanging of coupons in N.J.A.C. 19:45-1.46 be changed to "for keno wagering."

RESPONSE: Rejected. The only way a patron could receive a keno ticket is by wagering currency, coin, slot tokens or coupons.

COMMENT: The Division suggests clarification be added as to the meaning of different keno games in N.J.A.C. 19:45-1.47(a).

RESPONSE: Rejected. The Commission is satisfied that the regulation is clear that different keno games may be conducted at satellite keno booths than the game being conducted at the main keno booth.

COMMENT: The Division suggests that the option of permitting a casino department representative to transport the keno drawers to the keno booth without the keno writer being present and verifying their drawer be eliminated.

RESPONSE: Rejected. Since the casino security department representative has no access to the keys to the drawers and there is paperwork to document the funds being transported, the integrity of the fund is not compromised by this option.

COMMENT: The Division suggests that a reference to the casino security department member not having access to the keys to the keno drawers be added to N.J.A.C. 19:45-1.48(k).

RESPONSE: Accepted. The Commission agrees with this requirement as demonstrated by its reference in N.J.A.C. 19:45-1.48(f).

COMMENT: The Division recommends that N.J.A.C. 19:45-1.49(c) and 1.50(c) be revised to clarify that keno fill and credit slips are prepared by keno writers.

RESPONSE: Rejected. The Commission believes that N.J.A.C. 19:45-1.49(a) and 1.50(d) make clear that the keno writer is the preparer of the keno fill and keno credit slip, respectively.

COMMENT: The Division recommends that N.J.A.C. 19:45-1.50(f) be clarified to indicate that a person need not count the credit again if he or she is the same individual who counted the credit in N.J.A.C. 19:45-1.50(d).

RESPONSE: Accepted. Since the same individual may have already counted the credit, the Commission agrees that clarification is necessary.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this adoption are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

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

19:40-1.2 Definitions

(a) (No change.)

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

. . .

"Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), or for winnings from slot machine***, keno*** or simulcast wagering payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine***, keno*** or simulcast wagering payoffs.

. . .

19:41-1.3 Employee licenses

(a) No natural person shall be employed in the operation of a licensed casino or a casino simulcasting facility in a supervisory capacity or be empowered to make discretionary decisions which regulate casino or casino simulcasting facility operations or the management of an approved hotel unless he or she is over 18 years of age***, is a citizen of the United States or is authorized pursuant to Federal law to work in the United States,*** and holds a current and valid casino key employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino key employee license:

1.-9. (No change.)

10. Junket representatives, as defined in section 102 of the Act;

11. Simulcast counter manager;

12. Simulcast counter shift supervisor;

13. Keno manager;

14. Keno supervisor; and

Recodify 11. as 15. (No change in text.)

(b) No natural person shall be employed in the operation of a licensed casino or a casino simulcasting facility or in a position whose employment duties require or authorize access to restricted casino areas unless he or she is over 18 years of age, is a citizen of the United States ***or is authorized pursuant to Federal law to work in the United States,*** and holds a current and valid casino employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino employee license:

1.-5. (No change.)

6. Any natural person employed by a casino or its agent to provide physical security in a casino;

7. Casino simulcasting facility personnel involved in wagering-related activities in a casino simulcasting facility, such as casino pari-mutuel cashiers;

8. Keno writers; and

Recodify 8. as 9. (No change in text.)

(c) (No change.)

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.

. . .

*["Casino check" means a check which is drawn by a casino licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), for

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winnings from slot machine, keno or simulcasting wagering payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine, keno or simulcast wagering payoffs.]*

. . .

"Handle" means the total amount of coins, slot tokens or currency placed into a slot machine by a patron to play a slot machine.

. . .

"Keno booth" is defined in N.J.A.C. 19:45-1.47.

"Keno drawer" is defined in N.J.A.C. 19:45-1.48.

"Keno drop" means the sum of the total amount of currency, coin, gaming chips, coupons and slot tokens wagered on keno tickets.

"Keno payout" means the currency *[or]**,* coin ***or casino check*** paid to a player in exchange for a winning keno ticket.

"Keno request" is defined in N.J.A.C. 19:47-15.1.

"Keno ticket" is defined in N.J.A.C. 19:47-15.1.

"Keno win or loss" means the amount of currency, coin, gaming chips, coupons and slot tokens wagered by patrons at keno less the amount of currency and coin collected by patrons for winning keno wagers.

"Keno work station" is defined in N.J.A.C. 19:45-1.47.

. . .

"Shift" means the regular, daily work period of a group of employees administering and supervising the operation of table games, slot machines, simulcast counter, keno booths, cashiers' cage and satellite cages, working in relay with another such succeeding or preceding group of employees or specific times, as approved by the Commission, during the day that all drop boxes attached to gaming tables are removed, expeditiously transported to the count room, and replaced with empty ones.

. . .

19:45-1.1A Gaming day

(a) (No change.)

(b) The "gaming day" for a casino licensee on a calendar day which has been approved for extended hours of operation pursuant to N.J.S.A. 5:12-97(a) shall commence and terminate, and the end of the gaming day for the previous calendar day shall terminate, at those times set forth in the approved system of internal procedures and administrative and accounting controls of each casino licensee. Each casino licensee may establish a gaming day for slot machines which is different from its gaming day for table games and ***different from its gaming day for*** the game of keno; provided, however, that no gaming day shall be longer than 24 hours.

19:45-1.2 Accounting records

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

(c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:

1. (No change.)

2. Statistical game records to reflect drop and win amounts or, for the game of poker, the poker revenue, by table for each table game, and by keno work station number ***or keno writer*** for the game of keno, by each shift.

3.-10. (No change.)

19:45-1.8 Retention, storage and destruction of books, records and documents

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

(c) All original books, records and documents shall be retained by a casino licensee in accordance with the following schedules. For purposes of this subsection, "original books, records or documents" shall not include copies of originals, except for copies which contain original comments or notations or parts of multi-part forms.

1.-7. (No change.)

8. The following original books, records and documents do not have to be retained by a casino licensee for any minimum period of time, and may be destroyed without notice otherwise required by (f) below:

i.-xvi. (No change.)

xvii. Survey questionnaires regarding service in the casino hotel;

xviii. Any form not required by Commission regulations that is blank or unused, unless otherwise specified by this section; and

xix. Keno requests.

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

19:45-1.10 Closed circuit television system: surveillance department control; surveillance department restrictions

(a) (No change.)

(b) The closed circuit television system shall include, but need not be limited to, the following:

1. Light sensitive cameras with zoom, scan, and tilt capabilities to effectively and clandestinely monitor in detail and from various vantage points, the following:

i.-ii. (No change.)

iii. The operations conducted at and in the cashiers' cage, any satellite cage, and each office ancillary thereto;

iv.-vii. (No change.)

ix. The entrances and exits to the casino, casino simulcasting facility and the count rooms;

x. The gaming and operations associated with the conduct of keno; and

xi. (No change in text.)

2.-5. (No change.)

(c)-(i) (No change.)

[ALTERNATIVE A]

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-iv. (No change.)

v. The clandestine surveillance of the operation of the cashiers' cage and satellite cages;

vi.-x. (No change.)

xi. Providing timely notification to appropriate supervisors, the Commission and Division upon detecting, and also upon commencing video or audio recording of, any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, or who may be excluded or ejected pursuant to N.J.S.A. 5:12-71.1, or any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119(a);

xii. The communication in writing to the supervisor of the credit department or accurate and verifiable information which may be relevant in determining a patron's credit worthiness; and

xiii. The clandestine surveillance of all keno gaming and operations.

2.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter and the operation and conduct of keno and shall be responsible for the operation and conduct of the following games:

i.-xi. (No change.)

5. A slot department supervised by a casino key employee holding a license endorsed with the position of a slot department manager. The slot department may be responsible for the operation and conduct of keno and shall be responsible for the operation of the slot machines and bill changers.

6.-7. (No change.)

8. A casino accounting department supervised by a casino key employee holding a license endorsed with the position of controller. The supervisor of the casino accounting department may be responsible for

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the operation and conduct of the simulcast counter and, except as otherwise provided in (b)9 below, shall be responsible for the control and supervision of the cashiers' cage and any satellite cages. The casino accounting department shall be responsible for, without limitation, the following:

i.-iv. (No change.)

9. (No change.)

10. A keno department supervised by a casino key employee holding a license endorsement approved by the Commission, unless the casino licensee chooses to not offer the game of keno or to assign responsibility for the operation and conduct of keno to the table games department or the slot department.

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a)-(h) (No change.)

(i) The following personnel of the casino accounting or table games department shall, at a minimum, be used to operate a simulcast counter in a casino simulcasting facility:

1. Casino pari-mutuel cashiers shall be assigned the responsibility of generating, and issuing to patrons, pari-mutuel tickets and credit vouchers, making simulcast payouts to patrons, and redeeming credit vouchers for patrons;

2. Simulcast counter shift supervisor shall be the first level supervisor assigned the responsibility for directly supervising the operation and conduct of the simulcast counter;

3. Simulcast counter manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operations of the simulcast counter, including without limitation, the hiring and termination of all simulcast counter personnel and the creation of high employee morale and good customer relations, all in accordance with the policies and practices established by the casino licensee's board of directors or non-corporate equivalent.

(j) The following personnel, at a minimum, shall be used at keno:

1. Keno writer shall be the person assigned the responsibility to generate keno tickets, redeem coupons, accept wagers and issue keno payouts at a keno booth or satellite keno booth.

2. Keno supervisor shall be the supervisor assigned to each shift with the responsibility for directly supervising all activities at a keno booth.

3. Keno manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operation of the game of keno by the casino licensee, including, without limitation, the hiring and terminating of all keno personnel in accordance with the policies and practices established by the casino licensee. Nothing in these rules shall preclude the keno manager from also having the responsibility to manage either the table games department or the slot department, provided that the reporting lines and span of control of the keno manager have been approved by the Commission. The keno manager may not function simultaneously as a simulcast counter manager.

(k) (No change in text.)

*[ALTERNATIVE B

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-iv. (No change.)

v. The clandestine surveillance of the operation of the cashiers' cage and satellite cages;

vi.-x. (No change.)

xi. Providing timely notification to appropriate supervisors, the Commission and Division upon detecting, and also upon commencing video or audio recording of, any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, or who may be excluded or ejected pursuant to N.J.S.A. 5:12-71.1, or any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119(a);

xii. The communication in writing to the supervisor of the credit department of accurate and verifiable information which may be relevant in determining a patron's credit worthiness; and

xiii. The clandestine surveillance of all keno gaming and operations.

2.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter and the operation and conduct of keno and shall be responsible for the operation and conduct of the following games:

i.-xi. (No change.)

5. A slot department supervised by a casino key employee holding a license endorsed with the position of a slot department manager. The slot department may be responsible for the operation and conduct of keno and shall be responsible for the operation of the slot machines and bill changers.

6.-7. (No change.)

8. A casino accounting department supervised by a casino key employee holding a license endorsed with the position of controller. The supervisor of the casino accounting department may be responsible for the operation and conduct of the simulcast counter and the operation and conduct of keno and, except as otherwise provided in N.J.A.C. 19:45-1.11(b)9, shall also be responsible for the control and supervision of the cashiers' cage and any satellite cages. The casino accounting department shall be responsible for, without limitation, the following:

i.-iv. (No change.)

9. (No change.)

10. A keno department supervised by a casino key employee holding a license endorsement approved by the Commission, unless the casino licensee chooses to not offer the game of keno or to assign responsibility for the operation and conduct of keno to the table games department, the slot department or the casino accounting department.

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a)-(h) (No change.)

(i) The following personnel of the casino accounting or table games department shall, at a minimum, be used to operate a simulcast counter in a casino simulcasting facility:

1. Casino pari-mutuel cashiers shall be assigned the responsibility of generating, and issuing to patrons, pari-mutuel tickets and credit vouchers, making simulcast payouts to patrons, and redeeming credit vouchers for patrons;

2. Simulcast counter shift supervisor shall be the first level supervisor assigned the responsibility for directly supervising the operation and conduct of the simulcast counter;

3. Simulcast counter manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operations of the simulcast counter, including without limitation, the hiring and termination of all simulcast counter personnel and the creation of high employee morale and good customer relations, all in accordance with the policies and practices established by the casino licensee's board of directors or non-corporate equivalent.

(j) The following personnel, at a minimum, shall be used at keno:

1. Keno writer shall be the person assigned the responsibility to generate keno tickets, redeem coupons, accept wagers and issue keno payouts at a keno booth or satellite keno booth.

2. Keno supervisor shall be the supervisor assigned to each shift with the responsibility for directly supervising all activities at a keno booth.

3. Keno manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operation of the game of keno by the casino licensee, including, without limitation,

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the hiring and terminating of all keno personnel in accordance with the policies and practices established by the casino licensee. Nothing in these rules shall preclude the keno manager from also having the responsibility to manage either the table games department, the slot department or the casino accounting department, provided that the reporting lines and span of control of the keno manager have been approved by the Commission. The keno manager may not function simultaneously as a simulcast counter manager.

(k) (No change in text.)]*

19:45-1.15 Accounting controls *[within]* ***for*** the cashiers' cage, satellite cages, master coin bank, and coin vault*[s]*

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

(c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

1.-3. (No change.)

4. Reserve cash ("main bank") cashiers' functions shall *[be]* ***include***, but are not limited to, the following:

i.-viii. (No change.)

ix. Be responsible for the reserve cash bankroll;

x. Receive gaming chips, slot tokens and coupons from the simulcast vault or casino pari-mutuel cashiers; and

xi. Exchange currency, coin, slot tokens, gaming chips and coupons with the keno booth in exchange for proper documentation.

5. Master coin bank cashiers' functions shall *[be]* ***include***, but not limited to, the following:

i.-v. (No change.)

vi. Prepare the daily bank deposit of excess cash and coins;

vii. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40; *[and]*

viii. ***Receive slot tokens and prize tokens from, and transmit slot tokens to, general cashiers in exchanges supported by proper documentation; and***[.]*

*[viii.]****ix.*** Exchange currency, coin, slot tokens, gaming chips and coupons with the keno booth in exchange for proper documentation.

(d)-(f) (No change.)

19:45-1.19 Acceptance of tips or gratuities from patrons

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

(d) All tips and gratuities allowed keno writers shall be:

1. Immediately deposited into a transparent locked box reserved for that purpose;

2. Accounted for; and

3. Distributed to each keno writer on a pool basis in a manner to be determined by the casino licensee.

(e) Upon receipt from a patron of a tip or gratuity, a dealer, casino pari-mutuel cashier or keno writer shall extend his or her arm in an overt motion, and deposit such tip or gratuity in the locked box reserved for such purpose.

(f) (No change in text.)

19:45-1.25 Procedure for exchange of checks submitted by gaming ***or simulcast wagering*** patrons*; **repurchase of cash equivalents***

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

(f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino licensee which issued the check and shall verify the following information:

1.-4. (No change.)

5. That the check represents:

i.-ii. (No change.)

iii. The winnings from slot machine or keno payoffs; or

iv. (No change.)

(g)-(p) (No change.)

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes and the recording of keno revenue

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

(k) The keno computer system shall have the capability of generating a report which lists, by keno work station, the keno drop, total amount won by patrons and keno win or loss for each gaming day. This report shall be audited by a casino accounting department employee. Once the audit procedures have been completed, the casino accounting department employee shall sign the report and either attach the report to the Master Game Report for that gaming day or record the appropriate figures from the report onto the Master Game Report.

(l) If there is a difference between the keno win or loss as represented in the report referenced in (k) above and the figures reported as a result of the reconciliation of the keno drawer pursuant to N.J.A.C. 19:45-1.48(l), the casino licensee shall be required to pay gross revenue tax pursuant to N.J.S.A. 5:12-24 on the larger figure unless the casino licensee can adequately explain and document the reason for said difference. No adjustments to gross revenue shall be permitted without approval from the Commission.

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(j) Coupons shall be redeemed in the following manner:

1. Coupons redeemable for coin, currency or slot tokens shall only be redeemed by changepersons or at the slot or keno booths or the cashiers' cage. A changeperson, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens, or a keno writer shall accept the coupons in exchange for the stated amount of cash or keno ticket, and shall cancel the coupons upon acceptance. A coupon redeemable for currency may also be redeemed by slot attendants, who shall accept the coupon in exchange for the stated amount of currency and shall cancel the coupon upon acceptance. Cancellation of coupons by changepersons and slot attendants shall be in a manner that will permit subsequent identification of the individual who accepted and canceled the coupon.

i. Redeemed coupons shall be maintained by the slot or general cashier or keno writer and shall be exchanged with the Main or Master Coin Bank *[for a like amount of cash]* at the conclusion of gaming activity each day, at a minimum.

ii. (No change.)

2.-4. (No change.)

(k)-(o) (No change.)

(p) Prize tokens shall not be distributed as complimentary services or items pursuant to this section.

19:45-1.47 Keno booths; satellite keno booths

(a) Keno gaming operations shall only be conducted in a separate and distinct area approved by the Commission, although a casino licensee may conduct the same keno game or different keno games in separate approved areas. Any area designated for keno gaming activity shall be located:

1. On the casino floor;

2. Adjacent to the casino or casino simulcasting facility, provided, however, that the location from which patrons place wagers is on the casino floor; or

3. In a casino simulcasting facility.

(b) Any area designated for keno shall contain a physical structure known as a keno booth to house the keno writers and to serve as the central location for the following:

1. The custody of the keno booth inventory, including currency, coin, coupons, gaming chips, slot tokens, and forms and documents normally associated with the operation of a keno booth;

2. The exchange by patrons of coupons for currency, coin or keno tickets in conformity with N.J.A.C. 19:45-1.46(j);

3. The receipt of currency, coin, gaming chips, coupons and slot tokens for wagering at the game of keno;

4. The payment of winning wagers at the game of keno; and

5. Such other functions normally associated with the operation of a keno booth.

(c) The keno booth shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein, and shall include the following:

1. Separate work stations which shall include:

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i. Manually triggered silent alarm systems connected directly to the monitoring rooms of the closed circuit television system, the security department office and the on-site office of the Division;

ii. A computer terminal which shall be used to issue keno tickets and calculate payouts for winning keno tickets; and

iii. An area for the storage of a keno drawer.

2. A segregated area for the storage of the keno computer equipment. The location and security of the keno computer equipment shall be approved by the Commission. Nothing herein shall preclude a casino licensee from storing its keno computer equipment in another segregated and secure area of the casino hotel facility, provided that the location of and the security measures for such area have been approved by the Commission.

(d) In addition to the requirements in (c) above, a keno booth may contain the following:

1. A segregated and secure area for the storage of locked keno drawers pursuant to N.J.A.C. 19:45-1.48; and

2. A segregated and secure area, maintained on an imprest basis by the keno supervisor, which may be used to establish opening keno inventories and complete keno fills and keno credits pursuant to the requirements of this chapter.

i. The casino licensee shall submit for review and approval procedures governing how this area will be maintained on an imprest basis. In addition, each keno supervisor shall prepare a count sheet to record the opening and closing balance for their shift which shall be signed by both the incoming and outgoing keno supervisor.

(e) If a keno booth is designed so as to be immediately adjacent to the cashiers' cage or a satellite cage and access to the keno booth is through the cashiers' cage or satellite cage, the casino security department escort otherwise required by N.J.A.C. 19:45-1.48, 1.49 and 1.50 for the transportation of keno drawers and keno fills and credits shall not be required.

(f) A casino licensee may, in its discretion, operate one or more satellite keno booths. All the provisions of this subchapter governing the operation of a keno booth shall apply to a satellite keno booth with the exception of the following:

1. The keno games for which wagers are accepted at a satellite keno booth must be the same keno games for which wagers are accepted at the keno booth;

2. The only keno computer equipment which may be located at a satellite keno booth shall be the computer terminals used by the keno writers to issue keno tickets and calculate payouts of winning keno tickets;

3. A satellite keno booth may not contain a separate area for the storage of currency and coin pursuant to (d) above; and

4. A satellite keno booth may operate without the presence of a keno supervisor; however, a keno writer at a satellite keno booth may not redeem a winning keno ticket for $1,500 or more unless a keno supervisor is present pursuant to N.J.A.C. 19:47-15.6(b).

19:45-1.48 Accounting controls for the operation of keno booths and keno work stations

(a) Whenever a keno work station is opened for gaming, the keno work station shall commence operation with an amount of currency and coin to be known as the "keno inventory." No casino licensee shall cause or permit currency or coin to be added to, or removed from, such keno inventory during the gaming day except:

1. In exchange for a keno ticket purchased by a patron;

2. In order to make change for a patron buying a keno ticket;

3. In receipt of a coupon from a patron in exchange for currency, coin or a keno ticket in conformity with N.J.A.C. 19:45-1.46(j);

4. In payment of a winning or voided keno ticket in conformity with the provisions of N.J.A.C. 19:47-15.6; or

5. In conformity with the keno fill and keno credit procedures described in N.J.A.C. 19:45-1.49 and 1.50.

(b) Whenever a keno work station is opened for gaming activity, the keno inventory shall be stored in a lockable container known as a "keno drawer." For a given shift, each keno writer shall have his or her own keno drawer and no other person shall operate out of the drawer of that keno writer. Nothing herein shall preclude a keno writer from working at multiple keno work stations throughout the gaming day provided the keno writer appropriately logs on and off each computer terminal and continues to operate from his or her assigned keno drawer.

(c) Keno drawers shall be prepared by a main bank cashier, master coin bank cashier, cage supervisor or keno supervisor.

(d) The keys to the keno drawers containing the keno inventories shall be maintained and controlled in a secure place approved by the Commission. Each key shall be signed-in and signed-out in accordance with procedures approved by the Commission.

(e) Immediately prior to opening a keno work station for gaming, the keno writer assigned to such work station shall:

1. If the drawer is not already in the keno booth or satellite keno booth, transport the keno drawer, in the presence of a casino security department member, to the appropriate keno work station where the drawer shall be counted in accordance with the requirements of (h) below; or

2. If the drawer is in the keno booth or satellite booth, count the drawer in accordance with the requirements of (h) below.

(f) Nothing in this section shall preclude a casino licensee from developing approved internal control procedures pursuant to which the keno drawers for a shift are delivered to the keno booth by a member of the casino security department, provided the casino security department does not have access to the keys to the keno drawers.

(g) Each keno drawer which is prepared shall contain a form in addition to the currency and coin. The form shall be, at a minimum, a two-part form with the preparer of the drawer maintaining the duplicate as a balancing item and the original being sent with the currency and coin. The preparer shall record, at a minimum, the following information on the original and duplicate form:

1. The date and time of preparation of the keno drawer;

2. The keno work station location number;

3. The total amount of each denomination of currency and coin to be distributed;

4. The total amount of all denominations of currency and coin to be distributed; and

5. The signature of the preparer.

(h) *[At the keno work station, the]* ***The*** keno writer shall count the contents of the drawer in the presence of a keno supervisor or a supervisor thereof and shall assure the accurate comparison of the count to the figures recorded on the form referenced in (g) above.

1. If the count and figures agree, the keno writer and keno supervisor or supervisor thereof shall sign the form attesting to the accuracy of the information recorded thereon.

2. If a discrepancy exists between the amount of currency and coins counted and the amount of currency and coins recorded on the form, the appropriate corrections shall be made on the form by the keno supervisor or supervisor thereof. The keno supervisor or supervisor thereof shall place his or her initials next to each correction. Once all appropriate corrections have been made, the keno writer and keno supervisor or supervisor thereof shall sign the form. The keno supervisor or supervisor thereof shall immediately prepare a discrepancy report and forward a copy of the report to casino accounting, the Commission booth, the security department and the on-site office of the Division.

(i) Upon compliance with the signature requirements of (g) and (h) above, the keno writer shall input the opening inventory figure in total or by denomination into the computer terminal and maintain the form required by (g) above in the keno drawer until the end of the keno writer's shift. Notwithstanding the foregoing, the keno supervisor or a supervisor thereof may input the opening inventory figure or figures into the computer terminal provided the keno writer verifies the opening inventory figure or figures *[in]* ***input into*** the computer to the figures recorded on the form required by (g) above.

(j) At the end of each keno writer's shift, all currency, coin, slot tokens, coupons and gaming chips remaining in the keno drawer shall be counted by the keno writer. The keno writer shall record on the form required by (g) above or on a separate one-part form the following information:

1. The total value of each denomination of currency, coin, slot tokens and gaming chips in the keno drawer;

2. The total value of all coupons in the keno drawer;

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3. The total value of all denominations of currency, coins, slot tokens and gaming chips in the keno drawer;

4. The total amount of all keno fill slips;

5. The total amount of all keno credit slips; and

6. The signature of the preparer.

(k) Once the form required by (g) above has been completed with the information required by (j) above, it shall be placed in the keno drawer. If the casino licensee uses a separate form to record the closing keno inventory pursuant to (j) above, both forms shall be placed in the keno drawer. The keno drawer shall then be locked by the keno writer and either:

1. Immediately transported to the cashiers' cage, master coin bank or satellite cage by the keno writer in the presence of a casino security department member;

2. Placed in a secure storage area in the keno booth and held for subsequent transportation by the casino security department in a manner approved by the Commission***, provided, however, that the casino security department shall not have access to the key to the keno drawer***; or

3. Turned over to the keno supervisor for subsequent reissuance.

(l) Each casino licensee shall develop internal control procedures for the accounting and reconciliation of the assets and documents contained within the keno drawers used each gaming day. These procedures shall include reports generated by the keno computer system and shall provide for the verification of each keno drawer by a keno supervisor, main bank cashier, master coin bank cashier or cage supervisor and the reporting of any overage or shortage. Copies of all reports shall be forwarded to casino accounting on a daily basis.

(m) Nothing herein shall preclude a keno writer from counting the contents of his or her drawer at an area designed for this purpose within the keno booth rather than at the keno work station, provided however, that such area is approved by the Commission.

(n) Each keno writer shall be required to independently count the contents of his or her keno drawer and prepare the form required in (j) above without access to any information recorded on the reports referenced in (l) above.

19:45-1.49 Keno drawer fill procedures

(a) Once a keno drawer has been opened for use by the keno writer, if the keno writer needs additional currency or coin the keno writer shall prepare a keno fill slip.

(b) Keno fill slips shall be serially prenumbered forms. The series numbers of all keno fill slips shall be unique to the game of keno and each series of keno fill slips shall be used in sequential order. All original and duplicate void keno fill slips shall be marked "VOID" and shall require the signature of the keno writer who prepared the slip.

(c) A keno fill slip shall be at least a two-part manual or computerized form and shall contain, at a minimum, the following information on the original and each copy of the slip:

1. The denomination of the currency and coin being requested;

2. The total amount of each denomination of currency and coin being requested;

3. The total amount of all denominations of currency and coin being requested;

4. The keno work station location number which the currency and coin will be distributed;

5. The date and time of preparation; and

6. The signature of the keno writer or, if computer-prepared, the identification code of the keno writer.

(d) Upon completion of the keno fill slip by the keno writer, a keno supervisor shall either prepare the requested fill from the excess currency and coin maintained in the keno booth pursuant to N.J.A.C. 19:45-1.47 or transport all copies of the keno fill slip to the main bank or master coin bank where a cashier shall prepare the requested fill. Nothing herein shall preclude a main bank or master coin bank cashier or cage supervisor from picking up the completed keno fill slip at the keno booth.

(e) Once the requested funds have been prepared for transfer, either the keno supervisor or a supervisor thereof or the main bank or master coin bank cashier, as applicable, shall sign all copies of the keno fill slip and retain a copy as a balancing item. The funds shall be transported to the keno writer by the keno supervisor or a supervisor thereof or by a main bank or master coin bank cashier or cage supervisor *[in a sealed envelope or container]* along with the original keno fill slip. If the funds have been prepared by a main bank or master coin bank cashier, the individual who will transport the funds shall sign for receipt of the funds and a member of the casino security department shall escort the funds. ***If the funds need to be transported outside of the keno booth they shall be placed in a sealed envelope or container.***

(f) Once the *[sealed envelope or container has]* ***funds have*** been given to the keno writer, the casino security department employee *[or]*, if *[no casino security department employee is required for the transfer, the individual who delivered the requested funds to the keno writer]* ***applicable,*** shall sign the original keno fill slip as evidence of the transportation of the funds. The keno writer shall then count the currency and coin and, if the amount is consistent with the amount recorded on the keno fill slip, sign the original keno fill slip and enter the amount of the fill into the computer terminal. ***Notwithstanding the foregoing, the keno supervisor may input the amount of the fill into the computer terminal provided the keno writer verifies the amount input by the keno supervisor to the amount recorded on the original keno fill slip.***

(g) Upon compliance with the signature requirements described in (f) above, the original keno fill slip shall be maintained in the keno drawer for subsequent reconciliation purposes.

19:45-1.50 Keno drawer credit procedures

(a) Prior to the end of each keno writer's shift or at such other times as may be necessary, the keno writer may transfer excess currency, coin, gaming chips, slot tokens and coupons to either the main bank, master coin bank or keno supervisor by preparing a keno credit slip.

(b) Keno credit slips shall be serially prenumbered forms. The series numbers of all keno credit slips shall be unique to the game of keno and each series of keno credit slips shall be used in sequential order. All original and duplicate void keno credit slips shall be marked "VOID" and shall require the signature of the keno writer who prepared the slip.

(c) A keno credit slip shall be at least a two-part manual or computerized form and shall contain, at a minimum, the following information on the original and duplicate of the slip:

1. The denomination of the currency, coin, gaming chips and slot tokens being exchanged;

2. The total amount of each denomination of currency, coin, gaming chips and slot tokens being exchanged;

3. The total amount of coupons being exchanged;

4. The total amount of currency, coin, gaming chips, coupons and slot tokens being exchanged;

5. The keno work station location number;

6. The date and time of preparation; and

7. The signature of the keno writer or, if computer prepared, the identification code of the keno writer.

(d) Upon completion of the keno credit slip by the keno writer, a keno supervisor or a supervisor thereof, main bank cashier, master coin bank cashier or cage supervisor shall verify the items being removed from the keno drawer and the information recorded on the keno credit slip. If the items to be removed and the recorded information agree, the keno supervisor or supervisor thereof, main bank cashier, master coin bank cashier or cage supervisor shall sign the original and duplicate keno credit slip and place the items into a secured envelope or container for transportation to the main bank or master coin bank or designated area of keno booth pursuant to N.J.A.C. 19:45-1.47. The duplicate keno credit slip shall be maintained by the keno writer in the keno drawer as a balancing item and the original shall be transported by the keno supervisor or supervisor thereof, main bank cashier, master coin bank cashier or cage supervisor with the envelope or container. Prior to the transportation of the keno credit, the keno writer shall enter the amount being credited into the computer terminal. ***Notwithstanding the foregoing, the keno supervisor may input the amount of the credit into the computer terminal provided the keno writer verifies the amount input by the keno supervisor to the amount recorded on the duplicate keno credit slip.***

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(e) A casino security department employee shall be required to escort the keno supervisor or supervisor thereof, main bank cashier, master coin bank cashier or cage supervisor and the envelope or container if the credit is with the main bank or master coin bank. Once at the main bank or master coin bank, the casino security department employee shall sign the original keno credit slip as evidence of his or her escort of the funds.

(f) Upon receipt of the envelope or container, the receiving individual***, if different from the individual who verified the credit in (d) above,*** shall count the contents and compare the amount counted to the total recorded on the keno credit slip. If the contents and the recorded totals agree, the receiving individual shall sign the original and maintain it for subsequent forwarding to the accounting department at the end of the gaming day or deposit it into a locked accounting box.

19:45-1.51 Keno computer system

(a) Each casino licensee shall submit for approval the internal control procedures governing the security and control of its keno computer system. Such internal controls shall, without limitation, include:

1. System access restrictions which shall, at a minimum, preclude multiple log-ons by the same individual;
2. Hardware and software controls;
3. Floppy disc controls;
4. Override policies and restrictions;
5. Adequate documentation of keno tickets and payoff information; and
6. Backup and recovery procedures.

(b) The keno computer system shall have the capability of generating a hard (paper) copy of each keno transaction. Each keno transaction shall be identified with a unique identification number for the individual who performed said transaction. The identification number for each employee shall be different than that employee's computer password code.

(c) At any time, a representative of the Commission may count the contents of a selected keno drawer and compare that count to the computer-generated reports.

19:46-1.5 Nature and exchange of gaming chips, *[slot tokens and]* plaques*[,]* and match play coupons

(a) All wagering on authorized games***, other than slot machines,*** in a casino or casino simulcasting facility shall be conducted with gaming chips or plaques; provided***,*** however, that *[slot tokens or coins]* ***match play coupons*** shall be permitted for use in *[slot machines or keno or simulcast]* wagering at authorized games in accordance with N.J.A.C. 19:45-1.18 and 19:45-1.46. Gaming chips previously issued by a casino licensee which are not in active use by that casino licensee shall not be used for wagering at authorized table games, keno or casino simulcasting, and shall not be accepted nor exchanged for any purpose at a gaming table, keno booth or a casino simulcast counter. Such chips shall only be redeemed at the cashiers' cage pursuant to *[(f)]* ***(e)*** below.

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths or with changepersons for currency, coin or slot tokens *[issued pursuant to N.J.A.C. 19:46-1.33(d)1]* to play the slot machines***,*** and may be used for keno or simulcast wagering.

[(c) Slot tokens shall only be issued to a patron from a slot booth, cashiers' cage, bill changer or by a slot change person. Slot tokens shall only be issued upon the request of a patron; provided, however, complimentary slot tokens may be issued by a casino licensee in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46. Slot tokens shall only be redeemed at a coin redemption booth, a slot booth or the cashiers' cage.]

*[(d)]****(c)*** Except as provided in *[(i)]* ***(h)*** below and as otherwise may be specifically approved by the Commission, ***each casino licensee shall redeem its*** gaming chips*[, tokens,]* and plaques *[shall]* only *[be redeemed by a licensee]* from its patrons and shall not *[be]* knowingly *[redeemed]* ***redeem its gaming chips and plaques*** from any non-patron source.

*[(e)]****(d)*** *[Gaming chips, tokens and plaques shall be considered solely as evidence of a debt owed to their custodian by the casino licensee and shall be considered at no time the property of anyone other than the casino licensee issuing them.]* ***Each gaming chip and plaque is solely evidence of a debt that the issuing casino licensee owes to the person legally in possession of the gaming chip or plaque, and shall remain the property of the issuing casino licensee, which shall have the right at any time to demand that the person in possession of the gaming chip or plaque surrender the item upon the casino licensee exercising its right of redemption in accordance with (f) below.***

*[(f)]****(e)*** Each casino licensee shall redeem promptly its own genuine gaming chips and plaques *[by]****, except when the gaming chips or plaques were obtained or being used unlawfully. A casino licensee shall redeem gaming chips or plaques by exchanging them for an equivalent amount of*** cash or *[by]****, upon request by a patron who surrenders gaming chips or plaques in any amount over $100.00, for a casino*** check ***of that casino licensee in the amount of the chips or plaques surrendered and*** dated the day of such redemption *[on an account of the casino licensee as requested by the patron, except when the gaming chips or plaques were obtained or being used unlawfully. Slot tokens shall be redeemed or exchanged in the following manner:

1. Slot tokens issued pursuant to N.J.A.C. 19:46-1.33(d)1 shall be redeemed promptly by the issuing casino at the request of the patron for:

i.-ii. (No change.)

2. Slot tokens issued pursuant to N.J.A.C. 19:46-1.33(d)2 shall be exchangeable for a coupon which is redeemable for goods or services offered by, or on behalf of, the casino licensee; provided, however, that a casino licensee shall require that the amount of tokens exchangeable be equal to the face value of the coupon, the denomination of which shall be approved by the Commission]*.

*[(g)]****(f)*** Each casino licensee shall have the right to demand the redemption of its gaming chips*[, slot tokens]* or plaques from any person in possession of them and such person shall redeem said chips*[, slot tokens]* or plaques upon presentation *[of an equivalent amount of cash]* by the casino ***licensee of cash in an equivalent amount****[; provided, however, that slot tokens issued pursuant to N.J.A.C. 19:46-1.33(d)2 shall be exchanged in accordance with (f)2 above]*.

*[(h)]****(g)*** *[No]* ***Each*** casino licensee shall ***accept, exchange, use or redeem only gaming chips or plaques that it has issued and shall not*** knowingly accept, exchange, use or redeem gaming chips*[, tokens]* or plaques***, or objects purporting to be gaming chips or plaques, that have been*** issued by *[another casino licensee]* ***any other person,*** except that a casino licensee may redeem from its patrons *[foreign]* gaming chips*[, tokens]* or plaques ***issued by another legally operated casino licensee*** upon the representation of a patron that *[such tokens had been received by the patron from payout chutes of slot machines on the premises or]* such chips*[, tokens]* or plaques had been purchased or received as payment in a gaming transaction from an employee of such licensee working on the premises.

*[(i)]****(h)*** *[A]* ***Each*** casino licensee shall redeem promptly its own genuine gaming chips*[, tokens]* and plaques *[from]* ***presented to it by any*** other legally operated casino *[licensees]* ***licensee*** upon the representation that such chips*[, tokens]* and plaques were received or accepted unknowingly, inadvertently or in error*[, were unavoidably received in slot machines through patron play]* or were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange***, with other legally operated casino licensees,*** of *[foreign]* gaming chips*[, tokens]* and plaques***:***

1. That are in its possession and that have been issued by any other legally operated casino licensee; and

***2. That it has issued and that are presented to it for redemption by any other legally operated casino licensee*.**

*[(j)]****(i)*** Each casino licensee shall cause to be posted and remain posted in a prominent place on the front of the cashiers' cage, any satellite cage, the simulcast counter, the keno booth and any satellite keno booth a sign that reads as follows:

"By law, gaming chips or plaques issued by another casino may not be used, exchanged or redeemed in this casino or casino simulcasting facility."

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*[(k) Each casino licensee shall cause to be posted and remain posted in a prominent place on all slot booths, the keno booth, all satellite keno booths, the simulcast counter and all coin redemption booths a sign that reads as follows:

"It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here."]*

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

(a) Each casino licensee shall submit to the Commission, for its review, inspection and approval after consultation with the Division, each piece of gaming and simulcast wagering equipment, and any other related device, prior to its use, whether initially or following any modification thereto or replacement or movement thereof, in a casino, casino simulcasting facility or hub facility. Each such item, including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, count room equipment and counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices, card reader devices, ***slot tokens, prize tokens,*** data processing equipment, slot machines and slot bases (see N.J.A.C. 19:41-9.6(b) and N.J.A.C. 19:46-1.28), pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines, totalisators and all equipment utilized in the operation of keno, shall be subject to review, inspection and approval for, at a minimum, quality, design, integrity, fairness, honesty and suitability.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino, casino simulcasting facility or hub facility including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, card reader devices, data processing equipment, ***slot tokens, prize*** tokens, slot machines, pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines, totalisators and any equipment used in the operation of keno have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino, casino simulcasting facility or hub facility shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's casino security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice, cards and pai gow tiles may be found at N.J.A.C. 19:46-1.16, 19:46-1.18 and 19:46-1.19B, respectively.

(d) (No change.)

19:46-1.33 Issuance and use of slot tokens for gaming and simulcast wagering; prize tokens; slot token and prize token specifications

(a) Each casino licensee may, with Commission approval, issue the following types of metal disks having two faces and an edge:

1. A "slot token" that is:

i. Designed for gaming use in the hoppers of the casino licensee's slot machines***, in keno*** and in simulcast wagering within the casino licensee's casino simulcasting facility;

ii.-v. (No change.)

2. A "prize token" that is:

i.-ii. (No change.)

iii. Unavailable for use in ***keno or*** simulcast wagering;

iv.-ix. (No change.)

(b)-(g) (No change.)

19:46-1.34 Wagering at slot machines; use of slot tokens and prize tokens

(a) (No change.)

(b) Slot tokens may be used to make ***keno or*** simulcast wagers.

(c) Prize tokens shall not be used for ***keno or*** simulcast wagering or to activate play at slot machines.

19:46-1.35 Redemption of slot tokens and prize tokens from non-patrons; duty of patrons to surrender slot tokens and prize tokens upon demand

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

(f) Each casino licensee shall cause to be posted and remain posted in a prominent place on all slot booths***, the keno booth, all satellite keno booths, the simulcast counter*** and ***all*** coin redemption booths a sign that reads as follows:

"It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here."

SUBCHAPTER 15. KENO

19:47-15.1 Definitions

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

"Conditioning" means the coding which the player and computer mark on the keno request and keno ticket, respectively, to indicate the type of keno ticket being wagered and the rate at which the keno ticket is to be played.

"House advantage" means the difference between true odds (the statistical probability of a selected event occurring) and the established payoff odds (the payoff rate at which a winner will be paid if the selected event occurs).

"Keno request " means a one-part form used by a patron to select the desired number or numbers (spots) for one or more keno games.

"Keno ticket" means a one-part computer-generated form which is issued by a keno writer to a patron based on the information recorded on the keno request.

"Quick-pick" means a straight or basic keno ticket in which the computer system randomly selects the marked number or numbers (spots) for the patron.

"Rate card" means the document issued by a casino licensee listing the available types of wagers, payoff rates, wagering format and such other information as required by this chapter.

"Spots" means the number or number selected by a player for a keno game. For example, a keno ticket based on a keno request on which a player selected three numbers is referred to as a "three-spot" keno ticket.

19:47-15.2 Permissible wagers

(a) Keno shall be played with 80 consecutive numbers starting with the number one.

(b) The maximum number of spots that may be selected by a player for any keno game shall be determined by the casino licensee and set forth in its approved rate card.

(c) The following shall constitute the permissible wagers at the game of keno:

1. "Straight or basic ticket" is a keno ticket on which a player selects from one spot to the maximum number of spots that may be selected as permitted by the casino licensee without any type of groupings. The type of straight or basic ticket shall be determined by the number of spots the player selects.

2. "Split ticket" is a keno ticket on which the equivalent of two or more straight or basic tickets are written. Each group of spots shall be separated from each other by either circling each group or by drawing a line between them. The wager shall be limited in that the numbers in one group of spots shall not be duplicated in any other group of spots. For purposes of determining a winning keno ticket, each group of spots on a split ticket shall be evaluated separately.

i. When all of the groups on a split ticket contain an equal number of spots, the split ticket must be wagered at the same rate for each group.

ii. When at least two groups on a split ticket contain an unequal number of spots, the split ticket may be wagered at the same or a different rate for each group, notwithstanding (c)2i above.

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3. "Way ticket" is a keno ticket on which a player selects at least two groups containing an equal number of spots which are then combined to form several straight or basic ticket combinations within one ticket. Each group played must be wagered at the same rate.

4. "Combination ticket" is a keno ticket on which a player selects at least two groups containing any number of spots and also selects how the groups shall be combined to form multiple tickets within one ticket.

5. "King ticket" is a keno ticket on which a player selects a single spot which is referred to as the "king" and then combines the king with other groups of spots to form multiple tickets within one ticket. A king ticket may contain more than one king.

6. "Multi-race ticket" is a keno ticket which is wagered for more than one game. All of the games covered by the ticket must be consecutive and must be wagered at the same rate.

19:47-15.3 Placement of wagers; payoff requirements

(a) All wagering at the game of keno shall be conducted at a keno work station in a keno booth or satellite keno booth.

(b) All wagers at keno shall be made with currency, coin, gaming chips, coupons or slot tokens. Except for a quick-pick, each player shall be required to use a keno request in order to place a wager and no verbal wagers may be accepted at the game of keno. Nothing herein shall preclude acceptance of a losing or winning keno ticket as the patron's keno request for the next game.

(c) Each player shall be responsible for ensuring that the spots recorded on the keno ticket agree with the spots marked on the player's keno request. The casino licensee shall not be responsible for any error by a keno writer which the player does not detect prior to the start of the first game for which the ticket has been generated. All winnings shall be paid in accordance with the computer-generated keno ticket and not the keno request. A keno ticket may not be voided or changed once the keno computer system has been locked out for the start of the game.

(d) Each casino licensee shall provide notice of the minimum wagering requirements and the maximum wagers in effect at the game of keno in its approved rate card.

(e) *[Each casino licensee shall set the payoff amount for each winning wager so that the house advantage for each wager shall not exceed 30 percent; provided, however, a casino licensee may establish a maximum aggregate payoff of not less than $100,000 to all players in a game.]* ***Each casino licensee shall set payoff amounts which shall increase arithmetically in proportion to the amount of the wager until any maximum payoff is reached. A casino licensee may establish a maximum aggregate payoff of not less than $100,000 per game, which amount shall be equal to any maximum payoff amount which may be established for an individual wager. Notwithstanding any maximum payoff amount, the house advantage shall not exceed 30 percent for the minimum wager which is offered.***

19:47-15.4 Issuance of keno tickets

(a) Unless a player uses a previously generated keno ticket as a keno request or requests a quick-pick, a player shall request the issuance of a keno ticket by completing a keno request and submitting the request to a keno writer. The player shall complete a keno request by placing some type of distinguishing mark over the number or numbers he or she wishes to play. Prior to submitting the keno request to a keno writer, the player shall properly condition and price the keno request in accordance with the information set forth in the rate card of the casino licensee.

(b) Keno requests shall contain, at a minimum, the following:

1. A grid listing the numbers 1 through 80;
2. An area to record the number of games to be played;
3. An area to record the dollar value of each wager;
4. An area to record the conditioning; and
5. An area for the total price of the ticket.

(c) The keno writer shall input the information on the player's keno request or previously issued keno ticket into the keno computer system in a manner approved by the Commission. This action shall cause a one-part sequentially numbered keno ticket to be printed. Upon receipt of currency, coin, gaming chips, coupons or slot tokens in an amount equal to the total price of the keno ticket from the player, the keno writer shall issue the keno ticket to the player. The keno ticket shall contain, at a minimum, the following:

1. The date and time of issuance;
2. The keno work station number where the ticket was issued;
3. The numbers selected by the patron listed in a clearly identifiable manner;
4. The number of games to be played;
5. The first and last game number;
6. The conditioning;
7. The rate of each wager;
8. The number of ways played;
9. The total price of the keno ticket;
10. The identification code of the keno writer;
11. A representation as to the maximum keno limit for each game and an indication as to how that limit will be distributed to winners;
12. A statement that winning patrons must present a computer generated keno ticket in order to collect winnings; and
13. A statement as to the amount of time available to present a claim for the collection of keno winnings.

(d) If a casino licensee permits multi-race keno tickets, one keno request shall be used for all of the games to be wagered by the player. The player shall be required to pay for the wager prior to the start of the first game and shall not be paid for any winning games until the completion of the last game for which the multi-race keno ticket was issued unless the remaining races on the multi-race keno ticket are cancelled. A casino licensee may permit a player to receive a refund on a multi-race keno ticket for those games not drawn; provided, however, that the keno computer system is capable of generating adequate documentation for the refund and the internal control procedures governing the refund transaction are approved by the Commission.

(e) A keno writer may void a keno ticket prior to the start of the game for which the keno ticket was issued. A multi-race keno ticket may only be voided, in its entirety, prior to the start of the first game for which the keno ticket was generated. The method for voiding keno tickets shall be approved by the Commission. Each keno computer system shall be capable of maintaining, on a daily basis, a listing of voided keno tickets for each keno work station.

19:47-15.5 Keno games; selection of numbers

(a) Each casino licensee which elects to offer the game of keno shall conduct the game with an independent computer system which selects the winning numbers for the game in a random fashion. ***The program used to operate the random number generator shall be unique to the State of New Jersey and may not be used by any other jurisdiction with gaming.*** All keno computer systems shall be approved by the Commission in consultation with the Division. The random number generator for the keno system shall ***have a printer or other independent method which records the game numbers and selected winning numbers and shall*** be maintained under dual key control with the Commission inspector maintaining and controlling one key and the keno supervisor or supervisor thereof or another department member as approved by the Commission maintaining and controlling the second key.

(b) The casino licensee, at its discretion, shall determine the number of keno games to be conducted during the gaming day. Nothing in this subchapter shall preclude a casino licensee from conducting keno games at different intervals at separate locations. Each keno game conducted during the gaming day shall be assigned a unique sequential game number by the keno computer system.

(c) A keno supervisor or a keno writer shall provide verbal notice that the current keno game will be closing at least one minute prior to closing that game or the casino licensee shall display the remaining time between keno games at each keno booth or satellite keno booth.

(d) If the keno computer system does not have an automatic lock-out feature, a keno supervisor or a keno writer with verbal approval from a keno supervisor shall cause the keno computer system to start a keno game by:

1. Locking out all keno work station terminals so that no additional keno tickets may be voided or issued for the game being conducted; and
2. Randomly selecting 20 of the 80 available numbers.

(e) If the keno computer system does have an automatic lock-out feature, each casino licensee shall be required to submit override procedures which document who performed the override of the lock-out

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system and the reason for the override. The ability to override the lock-out feature shall be available only to a keno supervisor or supervisor thereof.

(f) As the 20 numbers are selected by the computer, the keno supervisor or a keno writer may announce the winning numbers for the patrons in the area of the keno booth or satellite keno booth.

(g) The 20 numbers which are randomly selected by the keno computer system and the game number shall be displayed or illuminated on a keno board or video monitor visible to patrons in the area of the keno booth and in such other areas of the casino*[, hotel]* and casino simulcasting facility as are approved by the Commission. ***Nothing in this subsection shall preclude the placement of keno boards or video monitors in the hotel facility so long as the Commission receives prior notification of such installation.***

(h) Each casino licensee shall be required to maintain a record of the winning numbers for each keno game for a period of at least one year.

19:47-15.6 Payment of winning wagers

(a) After the 20 numbers have been selected by the keno computer, a player may take a winning keno ticket to a keno booth or satellite keno booth for redemption. All winning wagers shall be paid in accordance with the information recorded on the computer-generated keno ticket. The method used by the casino licensee to evaluate the keno ticket for correct payment and cancellation shall be approved by the Commission. The keno writer shall pay the player from the cash in the keno drawer or issue a casino check and shall retain the keno ticket in the keno drawer until the end of the keno writer's shift.

(b) Winning payouts of $1,500 or more shall be authorized by a keno supervisor or a supervisor thereof. The keno supervisor or supervisor thereof shall sign the back of the winning keno ticket as evidence of such authorization.

(c) All winning keno tickets shall be valid for a maximum of one year unless a casino licensee establishes a lesser time limit for the validity of its winning keno tickets. In no case, however, may a casino licensee establish a time limit which is less than five minutes from the start of the game for which the winning ticket was sold. The time limits for which winning keno tickets shall be valid shall be set forth in the casino licensee's Rules of the Games Submission, its rate card and on all keno tickets. In the case of a multi-race keno ticket, any time limit set by a casino licensee shall:

1. Begin on the date of the last game for which the ticket was sold; and

2. Be at least five minutes from the start of the last game for which the ticket was sold.

(d) On a yearly basis, the dollar amount of all expired and unclaimed winning keno tickets shall be added to existing keno jackpot or jackpots by the casino licensee ***or paid to the Casino Revenue Fund*** in a manner approved by the Commission.

19:47-15.7 Irregularities

(a) A keno request which is marked in such a way that it is not clear which number or type of wager is to be played shall be returned to the player for preparation of another keno request.

(b) A winning keno ticket which is not accepted or read by the keno computer system shall be manually input by the keno writer in a manner approved by the Commission.

(c) If the keno computer system is not operational, in accordance with approved internal control procedures, a winning keno ticket:

1. For $10.00 or less may be manually paid by a keno writer;

2. For more than $10.00 but less than or equal to $1,000 may be manually paid by the keno writer with authorization from the keno supervisor or a supervisor thereof; and

3. For over $1,000 may not be paid until the keno ticket can be vertified by the keno computer system.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Slot Machine Areas; Density; Arrangement; Floor Plans; Slot Stools

Adopted Amendment: N.J.A.C. 19:46-1.27

Proposed: March 20, 1995 at 27 N.J.R. 1173(a).

Adopted: May 10, 1995 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: May 12, 1995 as R.1995 d.284, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 69(a) and 100.

Effective Date: June 5, 1995.

Expiration Date: April 15, 1998.

Summary of Public Comments and Agency Responses:

The Commission adopts the 90 percent alternative, which is consistent with the criteria set forth in N.J.S.A. 5:12-100h(2)(a). The Commission is satisfied this percentage will ensure that a variety of gaming opportunities continue to be offered by casino licensees, while providing them with increased discretion to determine the number of slot machines in their casino.

COMMENT: The Division of Gaming Enforcement interposes no objection to the proposed amendments.

RESPONSE: Accepted.

COMMENT: IGT and Sands Hotel and Casino support the proposed amendments with adoption of 90 percent slot density.

RESPONSE: Accepted.

COMMENT: TropWorld Casino and Entertainment Resort (TropWorld) requests that the Commission alternatively propose an amendment which would simply establish a maximum number of slot machines based upon square footage.

RESPONSE: Rejected. This comment is beyond the scope of this proposal, which is limited to establishing slot density as a percentage of square footage. TropWorld may propose, or the Commission may on its own initiative consider, such a regulatory amendment in the future.

COMMENT: TropWorld alternatively recommends that the Commission establish a 90 percent density for casinos without a simulcasting facility and a 75 percent density for casinos with a simulcasting facility.

RESPONSE: Rejected. TropWorld's proposal could cause a casino licensee to lose slot area by establishing a simulcasting facility. For example, a licensee with a 100,000 square foot casino and no simulcasting could have 90,000 square feet of slot area. If it then constructed a 10,000 square foot simulcasting facility, its casino could contain only 82,500 square feet of slot area.

Executive Order No. 27 Statement

An Executive Order No. 27 analysis is not required because the rules contained in this adoption are mandated by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to any Federal requirements or standards.

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

19:46-1.27 Slot machine areas; density; arrangement; floor plans; slot stools

(a) (No change.)

(b) Each casino licensee shall be permitted to install and operate one slot machine for every 10 square feet of its casino floor space which may be allocated to slot area, as determined in accordance with (d) below.

(c) Each casino licensee shall comply with the following design requirements in arranging the layout of its casino floor:

Recodify existing 3. as 1. (No change in text.)

Recodify existing iv. as 2. (No change in text.)

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(d) The total amount of casino floor space that a casino licensee may utilize for slot machines, the walkways between them, and other structures or areas which are reasonably related to the use of slot machines ("Slot Area") such as slot booths, change booths, change machines, slot carousels, walls, columns or other architectural structures, and any other structures or areas which are reasonably related to, and contained within casino floor space which is dedicated to, the use of slot machines, shall not exceed *[75]* ***90*** percent of the total amount of casino floor space and casino simulcasting facility floor space.

(e) The total amount of casino floor space dedicated to the Slot Area shall be measured by identifying the perimeter of each such area on the casino floor plan.

(f) Any casino floor space which is not used for slot area pursuant to (e) above shall be dedicated to authorized games other than slot machines and related support and circulation space.

Recodify existing (h)-(k) as (g)-(j) (No change in text.)

(a)

CASINO CONTROL COMMISSION

Notice of Administrative Correction
Rules of the Games
Blackjack
Irregularities
N.J.A.C. 19:47-2.15

Take notice that the Casino Control Commission has discovered an error in the text of N.J.A.C. 19:47-2.15 in that subsection (m) of that rule, adopted effective September 20, 1993 (see 25 N.J.R. 4508(c)), was omitted from the Code. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**):

19:47-2.15 Irregularities

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

(m) If the dealer inadvertently picks up his or her original face up card and places it in the discard rack prior to the completion of the second or third hand of multiple action blackjack, the dealer shall immediately notify a casino supervisor assigned to that table. The casino supervisor shall remove the appropriate cards from the discard rack and reconstruct the last hand of play so as to determine the dealer's original face up card. The original face up card shall be placed in the appropriate area on the layout, and the remaining cards shall be returned to the discard rack. Play shall resume in accordance with the rules of this chapter.

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF ENVIRONMENTAL PLANNING

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on May 1, 1995, 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 Upper Raritan Water Quality Management Plan was adopted by the Department of Environmental Protection (Department). This proposal amends the Mount Olive Township Wastewater Management Plan (WMP) regarding the proposed Hidden Meadows development and wastewater treatment facility. The WMP presently identifies a future year 2013 population of 565 persons and wastewater flow of 0.037 million gallons per day (mgd). This amendment increases the projected population to 764 persons (191 single family units) and wastewater flow to 0.0573 mgd. There is no expansion to the sewer service area. Additionally, this amendment allows for the future possibility of expansion of the proposed Golden Hills Wastewater Treatment Plant to also treat wastewater from the Hidden Meadows Development. The treated effluent from Hidden Meadows would be discharged via disposal fields located at Hidden Meadows.

This amendment proposal was noticed in the New Jersey Register on March 6, 1995. A comment on this amendment was received during the public comment period and is summarized below with the Township's and Department's response.

COMMENT: A representative for the owners of an 18.58 acre site fronting Flanders Drakestown Road (Block 7600, Lots 3-19) in Mount Olive Township requested to be incorporated as part of this amendment and be identified as an area to be served by an on-site treatment plant and disposal system. The site is presently identified to be served by individual septic systems. According to the commenter a proposed 15 single family home subdivision development application for the property is currently pending. The commenter feels that irrespective of whether the present residential development proposal is approved, any development in full conformity with zoning standards would generate sufficient wastewater gallonage to necessitate an on-site treatment plant and disposal system.

RESPONSE: The Township is not aware of any present development plans for the property. The site did have a 15 lot subdivision approval in 1977; however, a resolution was passed in 1986 stating the approval expired. Since then no development plans have been submitted to the Township. The site is presently identified to be served by "On-site Ground Water Discharge Facilities (Less Than 2,000 Gallons Per Day)". The Township would not consider a treatment facility to serve only 15 lots, and it is not aware of any discussions regarding possible connection into the adjacent development's treatment facility. The Township feels that the present service designation for the property is appropriate. The Department agrees that the present designation for the property is appropriate at this time and therefore has not included the project as part of the amendment.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plant); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(b)

OFFICE OF ENVIRONMENTAL PLANNING

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comments on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment proposal would adopt a Wastewater Management Plan (WMP) for Southampton Township. The WMP identifies a sewer service area expansion in the area of Vincentown for the Southampton Sewerage Company (SSC) Sewage Treatment Plant (STP). The Southampton elementary school and Southampton municipal complex, which are not presently identified as sewer service area of the SSC STP in the Tri-County WQM Plan but are presently served by the SSC STP, have been shown as existing sewer service area of this STP. The projected future wastewater planning flow for the SSC STP with the proposed sewer service area expansion is 0.433 million gallons per day (mgd). Since this projected wastewater planning flow is below the original 0.500 mgd design capacity of this STP, no expansions to the STP facilities have been proposed.

In addition, the WMP identifies all of the existing NJPDES permitted facilities which discharge to surface or ground waters within Southampton Township. No expansions to any of these existing wastewater treatment facilities has been proposed. All areas of Southampton Township zoned Highway Commercial, Industrial, and Office Professional, which are not located within the jurisdiction of the Pinelands Comprehensive Management Plan (CMP), have been designated for service by wastewater facilities with planning flows of less than 20,000 gallons per day (gpd) which discharge to ground water. The remainder of the Township has been designated for service by wastewater facilities with planning flows of less than 2,000 gpd which discharge to ground water. This draft WMP has been reviewed by the Pinelands Commission and appears to be consistent with the Pinelands CMP. Upon adoption of the WMP, Southampton Township will retain wastewater management planning responsibility for the entire Township.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at the Department, Office of Environmental Planning, CN423, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Environmental Planning at (609) 633-1179.

Interested persons should submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the Department address cited above with a copy sent to Mr. Joseph Augustyn, Richard A. Alaimo Association of Engineers, 200 High Street, Mt. Holly, New Jersey 08060. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by Department with respect to the amendment request.

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Any interested persons may request in writing that Department hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this notice to Dr. Van Abs at the Department address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(a)

OFFICE OF ENVIRONMENTAL PLANNING

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on April 17, 1995, 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 was adopted by the Department of Environmental Protection (Department). This amendment updates the Bergen County Utilities Authority (BCUA) Wastewater Management Plan (WMP) to allow for an increase in the future sewer service area to the BCUA sewage treatment plant (STP) to include the currently unserved area in the northeast portion of Old Tappan Borough. With the addition of this area, the entire Borough is delineated as within either the existing or future sewer service areas to the BCUA STP (discharge is to the Hackensack River, classified per N.J.A.C. 7:9B as SE-2). The service area is expanded in part to include the proposed Wood's Edge planned residential development (133 townhouse units, and 7 single family homes), Greenwoods Estates (12 single family homes), and Dorotockey's Run (72 townhouse units and 8 single family homes). With regard to water supply, it is anticipated that new developments in the Borough will be served by the Hackensack Water Company.

The year 2010 projected wastewater flow from Old Tappan specified in the BCUA WMP will be increased from 0.440 million gallons per day (mgd) to 0.617 mgd and the projected population from 6175 to 6500 to address the existing and expanded sewer service areas within the Borough. The October 3, 1994 public notice for this amendment identified a total year 2010 projected wastewater flow of 0.463 mgd for Old Tappan. A modified version of the amendment has been adopted, however, to identify a projected wastewater flow of 0.617 mgd for Old Tappan based on a recalculation of the residential and commercial flows.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; environment assessment requirements for a Discharge Allocation Certificate; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(b)

OFFICE OF ENVIRONMENTAL PLANNING

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on April 18, 1995, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department of Environmental Protection (Department). This amendment modifies the Montague Township Wastewater Management Plan to include the entire Montague Township Elementary School property, Block 41, Lots 3 and 3.01 in the area designated for on-site ground water disposal systems (with design capacities of less than 20,000 gallons per day). The existing school, serving 382 persons, is proposed to be expanded to serve a future school population of 600 persons. A new on-site ground water disposal system is proposed to serve the projected wastewater flow of 9,000 gallons per day. The new on-site ground water disposal system will be owned and operated by the Montague Township Board of Education.

The notice for this amendment published in February 21, 1995 New Jersey Register specified that the new on-site ground water disposal system for the Montague Township Elementary School would use constructed wetlands technology. At this time, however, the use of this technology is no longer proposed. Therefore, reference to the use of constructed wetlands technology in the amendment has been deleted.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(c)

OFFICE OF ENVIRONMENTAL PLANNING

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed amendment to the Sussex County Water Quality Management (WQM) Plan. The amendment proposal has been submitted by the Sussex County Department of Planning and Development. This amendment proposes to modify the Hardyston Township Wastewater Management Plan with regard to the future sewer service area of the Upper Wallkill Valley Water Pollution Control Plant (WPCP). The future sewer service area of this WPCP would be modified to delete the Fitzgibbons property, a previously proposed residential development, and add the Pilz properties which proposes 20,000 square feet of commercial development and 64,000 square feet of industrial development. This amendment would allow for transfer to the Pilz properties of the 10,000 gallons per day sewage allocation previously provided to the Fitzgibbons property. The projected wastewater flow to the Upper Wallkill Valley WPCP, which discharges to the Wallkill River, remains the same at 3.0 million gallons per day. The Pilz properties specifically include Block 64, Lots 4.04, 4.05 and 4.06 on the northwest side of Route 94 and Block 63, Lots 1.01 and 1.02 on the southeast side of Route 94.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Sussex County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Sussex County Department of Planning and Development, Division of Environmental Resource Planning, County Administration Building, P.O. Box 709, Newton, New Jersey 07860; and the Department, Office of Environmental Planning, CN418, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the

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Office of Environmental Planning at (609) 633-1179 or the Sussex County Department of Planning and Development at (201) 579-0500.

The Sussex County Board of Chosen Freeholders will hold **a public meeting** on the proposed Sussex County WQM Plan amendment at which on the amendment to Mr. George Krauss, Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Dr. Daniel J. Van Abs, Office of Environmental Planning, at the Department address cited above. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the Department must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the Department during its review. Sussex County and the Department thereafter may approve and adopt this amendment without further notice.

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Notice of Public Hearings
New Jersey Radiological Emergency Response Plan

Take notice that pursuant to the "Radiation Accident Response Act", N.J.S.A. 26:2D-37 et seq., the Department of Environmental Protection in cooperation with the Division of State Police will hold **public hearings** to determine the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan. The **hearings** will be held on the following dates:

Tuesday, July 11, 1995
7:00 P.M.
Bridgeton Middle School
251 West Broad Street
Bridgeton, New Jersey 08302

Tuesday, July 18, 1995
7:00 P.M.
The Greater Salem Community Center
118 Walnut Street
Salem, New Jersey 08079

Tuesday, July 25, 1995
7:00 P.M.
Lacey Municipal Building
818 West Lacey Road
Forked River, New Jersey 08731

Representatives of the Bureau of Nuclear Engineering, Department of Environmental Protection, and the Office of Emergency Management, Division of State Police will attend the hearings and respond to questions and comments from the public.

Copies of the New Jersey Radiological Emergency Response Plan are available for inspection at the following locations:

Office of Emergency Management
State Police Headquarters
West Trenton, New Jersey

Salem County Emergency Management Office
Cemetery Road
Mannington Township, New Jersey

Cumberland County Office of Emergency Management
Bridgeton Avenue
Bridgeton, New Jersey

Ocean County Office of Emergency Management
Robert J. Miller Air Park, Route 530
Berkeley Township, New Jersey

For additional information contact:

Ms. Maryanne Quinn
NJ Department of Environmental Protection
Bureau of Nuclear Engineering
CN 415
Trenton, New Jersey 08625-0415
Telephone (609) 987-2050

(b)

BUREAU OF SHELL FISHERIES

Notice of Closure of Delaware Bay Oyster Seed Beds

Take notice that, pursuant to N.J.S.A. 50:1-5 and N.J.A.C. 7:25-1.9, the Commissioner of the Department of Environmental Protection has approved the closure, effective April 21, 1995, of all Delaware Bay oyster seed beds for market harvest for the remainder of the 1995 season. Based on physical tests of the seed beds and the recommendation of the Advisory Committee, the Delaware Bay Shellfish Council voted to close the beds at its April 20, 1995, meeting.

HEALTH

(c)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS
LABOR
DIVISION OF WORKPLACE STANDARDS, AND OFFICE OF COMPTROLLER, FINANCE AND ACCOUNTING
RIGHT TO KNOW ADVISORY COUNCIL

Notice of Public Hearing
Worker and Community Right to Know Act

Take notice that pursuant to the "Worker and Community Right to Know Act," N.J.S.A. 34:5A-1 et seq., the Department of Health, Department of Environmental Protection, and Department of Labor, in conjunction with the Right to Know Advisory Council, will hold a **public hearing** to receive advice, information and recommendations from the public concerning the implementation of the Act. Testimony may be presented about substances which should be added to or deleted from the Right to Know Hazardous Substance List, the Special Health Hazard Substance List, and the Environmental Hazardous Substance List. Any suggested revisions to the lists should be based on and accompanied by documented scientific evidence. Specifics of the meeting are as follows:

Friday, July 14, 1995
10:00 A.M.
Department of Health
First Floor Auditorium
John Fitch Plaza
Trenton, New Jersey 08625

Persons who wish to testify should call Eva McGovern at (609) 984-2202. The record will be kept open for 15 days beyond July 14, 1995 for the receipt of written comments, which should be sent to: Richard Willinger, Program Manager, Right to Know Program, New Jersey Department of Health, CN 368, Trenton, New Jersey 08625-0368.

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HUMAN SERVICES

(a)

NEW JERSEY DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Availability of Contract Positions Advocacy Trainings 1995-96

Effective Date of This Notice: May 8, 1995

A. Name of Program: Advocacy Trainings 1995-96

B. Purpose: The New Jersey Developmental Disabilities Council is a planning and advisory agency. Encouraging advocacy and self-advocacy on behalf of persons with disabilities is central to the Council's mandated role as a systems change agent. The Council conducts training programs for individuals with disabilities, and family members, to develop the needed skills to be effective in advocating for personal needs and within larger systems of service delivery and public activities. One training program focuses on self-advocacy, one on systems advocacy. Participants are persons with disabilities and family members of persons with disabilities. This announcement is a search for two professional coordinators to manage the training programs in 1995-96. One coordinator focuses on overall program logistics (arranging clerical work, meeting arrangements, etc.), the other on what happens during the trainings (curriculum delivery, presentations and presenters, etc.).

C. Amount of available funding for the program: This announcement concerns two contracts, each 25 hours per week maximum for a period of 12 months beginning August 1, 1995. Each contract carries a maximum value of $21,000, billable hourly at $16.50 per hour.

D. Qualifications: Project Coordinator—excellent project management experience and communication skills. Training Coordinator—experience in advocacy and self-advocacy issues and/or training programs for persons with disabilities.

E. Procedure for eligible organizations to apply: Interested applicants may request an application by writing on their letterhead or calling:

Advocacy Training Positions
c/o Susan Richmond
NJ Developmental Disabilities Council
CN 700
Trenton, NJ 08625
(609) 292-3745

F. Address to which applications must be submitted: Same as in E above.

G. Date of informational meeting for applicants: Thursday, June 8, 1995, 10 A.M.

H. Deadline by which applications must be received: By close of business, Friday, June 16, 1995.

I. Date the applicant is to be notified of acceptance or rejection: July 17, 1995.

COMMERCE AND ECONOMIC DEVELOPMENT

(b)

NEW JERSEY COMMISSION ON SCIENCE AND TECHNOLOGY

Termination of Small Business Assistance Vouchers Program

Take notice that the New Jersey Commission on Science and Technology has terminated its Small Business Assistance Vouchers Program, effective April 25, 1995.

TRANSPORTATION

(c)

DIVISION OF ROADWAY DESIGN BUREAU OF RESEARCH

Notice for Professional Services for the Automated VMS Message Composition Project

Take notice that the New Jersey Department of Transportation is seeking qualified engineering firms interested in submitting letters of interest to conduct a research study on the Automated Variable Message Sign (VMS) composition. The study will result in recommended changes in some traffic operation activities, will contribute toward the relief of traffic congestion, and will contribute to drivers receiving important action requiring messages that are readily understandable and consistent in content irrespective of the type and condition of the roadway that a motorist is traveling on in the State.

The specific agency notice follows:

CLOSING DATE: 4:00 PM, FRIDAY, JULY 7, 1995
NEW JERSEY DEPARTMENT OF TRANSPORTATION
PUBLIC NOTICE FOR PROFESSIONAL SERVICES
FOR THE AUTOMATED VMS MESSAGE COMPOSITION PROJECT

The New Jersey Department of Transportation (NJDOT) is seeking qualified engineering firms interested in submitting letters of interest to conduct a research study on the automated variable message sign (VMS) composition. The objectives of this study are to determine the state of the art of composing and displaying driver effective Variable Message Sign messages; to advance the state of the art of VMS message technology; to develop a message dictionary for New Jersey Traffic Operations Variable Message Sign displays (including construction work zones); to determine warrants for the use of VMS versus temporary static or hybrid signs; to develop a user very friendly, personal computer aided system (software only) for the creation and retrieval of driver effective VMS messages; to develop the computer system so that it can be used for the trouble shooting of messages where driver difficulties are expected or are being experienced due to unusual conditions; to provide student tested, modified and improved training courses for managers, engineers, and program operators.

The AUTOMATED VMS MESSAGE COMPOSITION study will result in recommended changes in some traffic operation activities, will contribute toward the relief of traffic congestion, will contribute to drivers receiving important action requiring messages that are readily understandable and consistent in content irrespective of the type and condition of the roadway that a motorist is traveling on in the State.

The research study will consist of the following tasks:

(1) Synthesize technical literature and research results on all aspects of VMS messages, presentation methods, measurable environmental factors, message dictionaries;

(2) Determine the relationship between VMS characteristics, message effectiveness measurable environmental factors and specific relevant to each New Jersey VMS;

(3) Determine the legibility distance of the New Jersey VMS signs;

(4) Review the messages used in New Jersey using subjects that represent the New Jersey driving population. Test for the understandability and reading time of difficult messages that are local to New Jersey;

(5) Determine the programming requirements for computer aided VMS selection, composition, evaluation, trouble shooting, simulated presentation review on targeted VMS based on the use of currently available commercial software programs;

(6) Recommend and develop message making formulas, principles, and criteria for computer aided message evaluation;

(7) Develop and test computer aided user interfaces. Include evaluation system decision models and flow charts;

(8) Develop and test a message maker and trouble shooting training program;

(9) Present the results, recommendations and demonstrate the software program and the training manual to the project panel for review, critique and evaluation;

(10) Develop a working message maker and trouble shooting computer program using a vast assortment of test messages and VMS characteristic files in a data base. Present to the project panel for review, comment and selection. Allow for the smooth interaction with various New Jersey highway agency owned Variable Message Sign Software;

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(11) Include in the data base all relevant message files, word files, abbreviation files and VMS characteristic files;

(12) Develop and then test full scale programs using actual New Jersey type Variable Message Signs in off highway facilities with the programs being used by representative students engineers, and managers;

(13) Train operations sponsors and four DOT employees, providing user manuals; and

(14) Submit an all inclusive final report for review and approval. Print and distribute approved final report.

The effort described above will be completed within 28 months from the start in the second half of 1995. There is $500,000 (five hundred thousand dollars) available for this contract.

EVALUATION REQUIREMENTS

Proposed staffing, recent relevant experience, licensing and professional registration of the key project individuals will be critical elements in short listing and final selection for respondents to receive an RFP.

Respondents will be evaluated on the basis of: Current PS01 (years experience in drivers information studies should be disclosed); Previous Cost basis contracts with state DOTs and/or FHWA; Location of Office; Insurance; DBE targets; Staff Size; Evaluation of file with NJDOT; and Special Task and/or Equipment.

NJDOT, in accordance with Title VI Civil Rights Act of 1964, 78 Stat. 252.52 U.S.C. and 49 C.F.R., Part 21 issued pursuant to such Act, affords minority/women business enterprises full opportunity to submit an indication of interest in response to this invitation and will not discriminate against any interested firm on the grounds of race, creed, color, sex, age, or national origin in a contract award.

Interested firms will be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and all other applicable Equal Opportunity Laws and Regulations.

Following a review of submitted Letters of Interest, NJDOT will request proposals from the most qualified firms/teams. Proposals will not be solicited from firms or teams that have not responded to the Request for Letters of Interest. The short listing process is expected to take approximately four to six weeks from the receipt of the responses. All respondents will be notified at the completion of the process regarding their status.

SUBMISSION REQUIREMENTS

Qualified firms or joint ventures interested in being considered for this study must submit 15 copies of:

(1) a letter of interest not exceeding four single side, letter sized pages, summarizing the firm's understanding of the project, qualifications of the firm, prior relevant experience, team organization and key personnel;

(2) a list of references claimed as relevant experience by each firm and each key individual including: name, title, agency, address and telephone number of client agency project manager;

(3) an organizational chart showing proposed key personnel names, position titles and reporting relationships of each firm; and

(4) completed NJDOT form PS01 for the prime consultant and each designated subconsultant or for each member of a joint venture team. Blank forms may be obtained upon written request. The responses must be submitted by the closing date and addressed to:

Mr. Richard L. Hollinger
New Jersey Department of Transportation
Bureau of Research, CN600
Trenton, New Jersey 08625-0600
Office Location: 1035 Parkway Avenue, Sixth Floor, Engineering and Operations Building, Room 6513, Ewing Township, Trenton, New Jersey

Solicitation Number: 71401

Any questions on this effort should be directed to:

Karl Brodtman
New Jersey Department of Transportation
Bureau of Research, CN600
Trenton, New Jersey 08625-0600
(609) 530-5957 FAX # (609) 530-5972

Please note that the New Jersey Department of Transportation has a DBE target of 20 percent.

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EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, a single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	4/21/97
1:5	9/13/96
1:6	4/21/97
1:6A	2/27/00
1:7	4/21/97
1:7A	4/3/00
1:10	4/21/97
1:10B	9/13/96
1:11	4/21/97
1:12	8/1/99
1:12A	8/1/99
1:13	4/21/97
1:13A	2/3/99
1:14	7/15/96
1:20	4/21/97
1:21	4/21/97
1:30	1/25/96
1:31	4/21/97

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:1-4	Exempt (28 C.F.R. Part 35)
2:2	3/7/99
2:3	7/7/99
2:5	4/3/00
2:6	2/6/00
2:9	8/19/96
2:16	1/22/96
2:17	5/31/96
2:18	8/5/96
2:19	10/1/95
2:20	10/1/95
2:21	8/5/96
2:22	6/26/97
2:23	5/28/98
2:24	3/13/00
2:32	5/13/97
2:33	5/1/00
2:34	12/5/99
2:48	10/25/95
2:50	5/1/97
2:52	5/1/95
2:53	1/10/96
2:54	Exempt (7 U.S.C. 601 et seq., 7 C.F.R. 1004)
2:68	10/29/98
2:69	12/20/98
2:70	8/20/95
2:71	7/2/98
2:72	7/2/98
2:74	7/2/98
2:76	6/28/99
2:90	6/22/95

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	3/6/00
3:4	8/17/97
3:6	3/1/96
3:7	9/12/95
3:11	7/18/99
3:12	6/15/97
3:13	1/21/97
3:14	3/7/99
3:16	6/18/95
3:17	6/13/96
3:18	12/24/97
3:19	3/15/96
3:21	1/24/97
3:22	11/7/99
3:23	7/6/97
3:24	4/3/00
3:25	7/23/97
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:29	8/5/96
3:32	11/1/98
3:33	11/7/99
3:38	9/11/97
3:40	11/21/99
3:41	10/11/95
3:42	3/10/98

PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
4A:1	9/22/97
4A:1-5	Exempt (28 C.F.R. Part 35)
4A:2	9/22/97
4A:3	8/5/98
4A:4	5/12/98
4A:5	9/22/97
4A:6	12/22/97
4A:7	9/22/97
4A:8	4/21/00
4A:9	9/22/97
4A:10	9/22/97

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/3/00
5:2	3/6/00
5:3	7/30/98
5:4	9/1/97
5:5	Exempt (28 C.F.R. Part 35)
5:10	8/26/98
5:11	3/9/99
5:12	2/6/00

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N.J.A.C.	Expiration Date
5:13	6/22/97
5:14	11/9/95
5:15	7/5/99
5:16	6/5/00
5:18	1/4/00
5:18A	1/3/00
5:18B	1/3/00
5:18C	1/3/00
5:19	1/15/98
5:20	9/3/96
5:22	5/15/00
5:23	2/3/98
5:24	7/10/95
5:25	2/19/96
5:25A	4/20/97
5:26	2/7/96
5:27	5/12/00
5:28	12/13/95
5:29	2/19/96
5:30	5/27/98
5:31	1/3/00
5:33	8/6/95
5:34	12/3/95
5:37	11/21/99
5:50	9/17/98
5:51	8/11/98
5:52	3/20/00
5:60	6/20/99
5:70	4/22/97
5:71	6/4/95
5:80	4/17/00
5:91	12/7/97
5:92	2/7/96
5:93	6/6/99
5:100	6/18/95

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95
5A:3	2/3/97
5A:4	2/3/97
5A:5	9/21/97
5A:6	6/20/99
5A:7	Exempt (28 C.F.R. Part 35)

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:1	7/11/97
6:2	6/8/00
6:3	12/7/99
6:5	4/22/97
6:7	11/18/99
6:8	6/11/98
6:9	11/3/99
6:11	3/21/97
6:12	9/8/97
6:20	1/16/97
6:21	1/11/01
6:22	1/16/97
6:22A	4/8/00
6:24	7/11/97
6:26	2/1/01
6:28	8/10/00
6:29	8/8/96
6:30	12/6/00
6:31	5/16/96
6:39	12/9/00
6:43	2/10/97
6:46	10/10/98
6:51	2/5/98
6:53	10/10/98
6:64	3/14/99
6:68	5/12/00
6:70	2/5/01
6:78	4/8/00

ENVIRONMENTAL EDUCATION—TITLE 7

N.J.A.C.	Expiration Date
7:1	8/15/95
7:1A	5/22/97
7:1C	6/15/95
7:1D	9/13/98
7:1E	9/3/96
7:1F	4/16/97
7:1G	6/16/99
7:1H	7/13/95
7:1I	2/22/99
7:1J	1/4/98
7:1K	3/1/98
7:1L	4/17/00
7:2	10/7/96
7:3	6/21/98
7:4	8/17/97
7:4A	9/16/99
7:4B	12/6/98
7:4C	11/7/99
7:5	11/19/95
7:5A	6/17/98
7:4B	6/24/98
7:5C	12/22/99
7:5D	3/20/00
7:7	6/24/99
7:7A	3/16/97
7:7E	7/24/95
7:8	2/5/98
7:9	1/18/96
7:9A	8/19/99
7:9B	1/18/96
7:10	12/31/95
7:11	5/3/98
7:12	11/24/97
7:13	3/20/00
7:14	4/27/99
7:14A	6/2/95
7:14B	11/18/97
7:15	9/22/99
7:18	7/3/96
7:19	2/24/00
7:19A	3/19/95
7:19B	3/19/95
7:20	4/28/00
7:20A	12/8/98
7:22	12/27/96
7:22A	12/22/99
7:23	5/27/99
7:24	4/22/96
7:24A	3/6/00
7:25	2/15/96
7:25A	4/20/00
7:26	10/25/95
7:26A	11/18/96
7:26B	11/18/97
7:26C	5/17/98
7:26E	6/7/98
7:27	Exempt
7:27A	12/2/99
7:27B	Exempt
7:28	7/30/95

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N.J.A.C.	Expiration Date
7:29	5/21/95
7:30	11/24/97
7:31	6/18/98
7:32	7/6/98
7:36	10/29/98
7:38	9/18/95
7:45	1/28/99
7:50	Exempt
7:60	3/2/97
7:61	5/17/98

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:2	8/16/98
8:2A	12/20/98
8:7	9/14/95
8:8	4/12/99
8:9	2/14/96
8:13	9/8/97
8:18	10/21/99
8:19	5/8/00
8:20	3/2/00
8:21	10/23/95
8:21A	8/3/97
8:22	7/11/96
8:23	12/13/99
8:23A	12/13/99
8:24	4/14/98
8:25	5/11/98
8:26	4/12/96
8:31	12/22/99
8:31A	2/20/95
8:31B	8/17/95
8:31C	4/20/97
8:33	7/27/95
8:33A	11/25/97
8:33B	7/27/95
8:33C	9/8/97
8:33E	12/20/95
8:33F	EXPIRED RULES
8:33H	9/8/97
8:33I	8/16/96
8:33J	EXPIRED RULES
8:33L	6/6/96
8:33M	EXPIRED RULES
8:33P	3/19/95
8:33Q	11/19/95
8:33R	12/11/94
8:33S	10/4/98
8:34	11/1/98
8:35A	9/8/97
8:36	12/20/98
8:38	7/18/97
8:39	11/21/99
8:40	12/6/96
8:41	6/21/98
8:41A	2/18/97
8:42	8/17/97
8:42A	6/17/99
8:42B	6/14/98
8:43	10/4/98
8:43A	8/16/98
8:43E	4/3/00
8:43F	2/7/00
8:43G	2/3/00
8:43H	6/17/99
8:44	4/12/00
8:45	2/6/00
8:51	9/17/95
8:52	12/11/96
8:57	4/12/00

N.J.A.C.	Expiration Date
8:57A	4/12/00
8:57B	4/17/00
8:59	9/28/99
8:60	3/13/00
8:61	10/4/96
8:62	2/21/00
8:65	6/17/96
8:66A	3/3/00
8:70	6/14/98
8:71	5/16/99
8:80	4/6/97
8:91	9/19/99
8:100	7/20/97

HIGHER EDUCATION—TITLE 9/9A

N.J.A.C.	Expiration Date
9:1	9/30/98
9:2	5/4/95
9:4	9/26/96
9:5	4/1/96
9:6	4/30/95
9:6A	3/15/98
9:7	11/6/97
9:8	10/15/95
9:9	8/16/98
9A:11	4/11/99
9A:12	4/11/99
9:14	4/11/95
9:15	EXPIRED RULES
9A:14	2/22/99
9A:15	6/20/99
9:16	1/19/98

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1A	5/12/98
10:2	12/11/96
10:3	10/22/98
10:4	Exempt (28 C.F.R. Part 35)
10:6	1/7/96
10:7	1/21/97
10:8	1/3/99
10:11	1/13/00
10:12	12/23/96
10:14	5/7/98
10:15	11/23/99
10:15A	11/23/99
10:15B	11/23/99
10:15C	11/23/99
10:16	12/21/97
10:17	4/17/00
10:18	7/18/99
10:19	5/12/00
10:31	5/13/99
10:35	9/21/97
10:36	12/29/97
10:37	11/2/95
10:37A	6/6/99
10:37B	5/2/99
10:37C	7/18/99
10:37D	9/6/99
10:38	4/29/96
10:38A	7/19/98
10:40	4/25/99
10:41	4/18/99
10:42	8/19/96
10:43	12/19/99
10:44A	1/8/98
10:44B	7/16/95

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N.J.A.C.	Expiration Date
10:45	2/20/95
10:46	9/17/95
10:46A	1/3/00
10:46B	1/17/96
10:46C	4/17/96
10:47	11/2/95
10:48	12/19/95
10:49	8/17/97
10:50	2/27/96
10:51	9/7/98
10:52	2/3/00
10:53	4/27/95
10:53A	11/2/97
10:54	2/15/96
10:55	4/3/00
10:56	8/21/96
10:57	2/13/96
10:58	2/22/96
10:59	2/15/96
10:60	2/19/96
10:61	2/15/96
10:62	1/3/99
10:63	1/3/00
10:64	2/22/96
10:65	2/19/96
10:66	12/6/98
10:67	2/19/96
10:68	6/28/96
10:69	5/14/98
10:69A	3/26/98
10:68B	10/21/98
10:70	6/7/96
10:71	12/24/95
10:72	8/24/97
10:73	7/15/96
10:80	9/27/98
10:81	7/25/99
10:82	7/25/99
10:83	11/2/97
10:84	1/18/99
10:85	11/4/99
10:86	9/21/97
10:87	12/21/98
10:88	6/5/00
10:89	2/27/00
10:91	9/4/95
10:95	11/7/99
10:97	4/15/99
10:99	6/4/95
10:109	2/4/96
10:120	7/9/96
10:121	7/16/95
10:121A	11/25/97
10:122	5/16/99
10:122A	Exempt
10:122B	1/4/98
10:122C	1/4/98
10:122D	1/4/98
10:122E	1/4/98
10:123	7/13/95
10:123A	8/17/97
10:124	11/4/97
10:125	4/26/00
10:126	10/6/98
10:126A	4/4/00
10:127	8/16/98
10:128	2/19/96
10:129	7/13/95
19:130	7/2/95
10:131	10/7/97
10:132	10/25/96
10:133	1/4/98
10:133A	1/4/98
10:133B	1/4/98
10:133C	1/4/98
10:133D	11/1/98
10:133H	10/17/99
10:150	10/22/97

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	6/1/97
10A:1-3	Exempt (28 C.F.R. Part 35)
10A:2	12/9/99
10A:3	9/16/96
10A:4	5/7/96
10A:5	6/17/96
10A:6	10/27/97
10A:8	8/19/97
10A:9	2/18/97
10A:10	7/9/97
10A:12	3/6/00
10A:16	7/6/97
10A:17	2/3/97
10A:18	5/27/97
10A:19	4/25/99
10A:20	2/18/97
10A:21	2/4/96
10A:22	3/7/99
10A:23	7/6/97
10A:26	2/6/00
10A:31	3/5/95
10A:34	4/6/97
10A:35	4/15/96
10A:70	Exempt
10A:71	1/27/00

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	1/31/96
11:1-3	Exempt (28 C.F.R. Part 35)
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/15/98
11:6	7/6/98
11:7	9/25/97
11:10	7/12/95
11:12	9/27/96
11:13	11/10/97
11:15	10/17/99
11:16	1/31/96
11:17	4/15/98
11:17A	12/30/99
11:17B	12/30/99
11:17C	12/30/99
11:17D	12/30/99
11:18	12/13/99
11:19	2/1/98
11:20	8/13/98
11:21	10/15/98

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	11/24/98
12:5	10/18/98
12:6	9/24/98
12:7	Exempt (28 C.F.R. Part 35)
12:15	7/30/95
12:16	2/9/00

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N.J.A.C.	Expiration Date
12:17	1/4/96
12:18	3/5/98
12:19	7/2/95
12:20	7/18/99
12:23	4/4/99
12:35	7/16/95
12:40	12/22/99
12:41	1/14/99
12:45	12/29/98
12:51	11/22/96
12:55	12/16/96
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/19/98
12:61	12/16/96
12:90	11/9/99
12:100	8/26/99
12:102	4/24/00
12:105	1/11/96
12:110	1/8/98
12:112	8/27/98
12:120	3/13/00
12:175	11/10/98
12:190	2/1/98
12:195	6/14/98
12:196	8/6/95
12:200	8/3/95
12:210	12/16/96
12:235	5/3/96

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:1	Exempt (28 C.F.R. Part 35)
12A:9	5/28/98
12A:10	3/30/98
12A:10A	3/30/98
12A:11	4/30/98
12A:31	7/16/95
12A:80	7/2/95
12A:100	7/17/96
12A:120	7/27/98
12A:121	11/15/98

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	6/9/98
13:1C	Exempt (28 C.F.R. Part 35)
13:1D	4/18/99
13:2	7/24/95
13:3	5/17/98
13:4	1/17/96
13:9	5/15/00
13:10	3/25/99
13:13	7/16/95
13:14	9/16/96
13:15	5/15/00
13:18	3/28/00
13:19	8/17/99 (except 13:19-10, 12 and 13, for which expiration was waived)
13:20	12/13/95
13:21	12/13/95
13:23	5/19/99
13:24	9/26/99
13:25	3/15/00
13:26	7/29/98
13:27	2/21/00
13:28	5/14/98
13:29	5/1/00
13:30	3/10/00
13:31	11/20/96
13:32	10/21/97
13:33	3/10/00
13:34	10/22/98
13:35	9/19/99
13:36	9/19/99
13:37	1/19/00
13:38	8/27/95
13:39	6/16/99
13:39A	6/21/96
13:40	8/3/95
13:40A	12/16/96
13:41	7/17/95
13:42	11/1/98
13:43	8/26/98
13:44	8/4/99
13:44B	11/2/97
13:44C	7/8/98
13:44D	6/30/99
13:44E	7/1/96
13:44F	6/15/97
13:44G	1/4/98
13:45A	11/9/95
13:45B	9/21/97
13:46	9/4/95
13:47	1/27/97
13:47A	10/2/97
13:47B	2/10/99
13:47C	6/6/99
13:47F	3/6/00
13:47K	9/17/95
13:48	9/19/99
13:49	12/16/98
13:51	9/16/96
13:54	11/18/96
13:57	5/16/99
13:59	7/30/95
13:60	1/16/97
13:61	5/1/00
13:62	3/17/00
13:63	8/19/96
13:70	1/25/00
13:71	1/25/00
13:72	1/19/98
13:75	7/5/99
13:76	4/16/98
13:77	1/22/98
13:78	11/24/98
13:79	10/22/98
13:80	9/17/95
13:81	8/6/95
13:82	4/18/99
13:85	6/5/00

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	6/1/97
14:3	5/6/96
14:5	12/2/96
14:5A	1/4/98
14:6	9/3/96
14:9	4/1/96
14:10	9/6/96
14:11	3/1/98
14:12	11/4/96
14:17	3/21/99
14:18	7/26/95
14:25	2/23/00
14:29	3/4/96

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N.J.A.C.	Expiration Date
14:30	2/19/96
14:31	1/12/00
14:32	1/22/96
14:33	1/12/00
14:34	1/12/00
14:38	4/1/96

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:14	1/28/99

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:1	Exempt (28 C.F.R. Part 35)
15:2	4/12/98
15:3	8/19/96
15:5	7/6/97
15:10	4/15/96

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	10/1/95
16:1A	6/13/99
16:1B	Exempt (28 C.F.R. Part 35)
16:4	9/16/96
16:5	5/15/00
16:6	7/8/99
16:20A	1/12/98
16:20B	1/12/00
16:21	8/6/95
16:21A	10/14/99
16:21B	12/3/95
16:22	12/18/95
16:23	6/5/00
16:24	12/8/99
16:25	8/9/98
16:25A	5/13/98
16:26	7/8/99
16:27	4/8/96
16:28	5/7/98
16:28A	5/7/98
16:29	5/7/98
16:30	5/7/98
16:31	5/7/98
16:31A	5/7/98
16:32	1/12/00
16:38	10/15/95
16:41	9/8/97
16:41B	7/2/95
16:41C	5/4/97
16:41D	3/21/99
16:43	4/6/00
16:44	3/24/99
16:45	8/12/99
16:46	3/24/99
16:47	4/20/97
16:49	1/12/00
16:50	12/6/98
16:51	2/14/97
16:53	2/14/97
16:53B	4/15/99
16:53C	5/13/98
16:53D	4/8/99
16:54	7/6/98
16:55	5/13/98
16:56	6/22/99
16:60	5/13/98
16:61	5/13/98
16:62	1/12/00
16:72	3/20/96
16:73	5/18/97
16:74	12/16/96
16:77	1/27/00
16:78	12/17/95
16:79	9/12/96
16:80	10/5/98
16:81	10/5/98
16:82	10/17/99
16:83	1/19/98
16:84	11/1/98
16:85	11/1/98

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/1/98
17:2	2/21/00
17:3	12/20/98
17:4	6/8/95
17:5	11/30/95
17:6	12/20/98
17:8	10/15/95
17:9	8/23/98
17:10	5/1/98
17:12	12/9/99
17:13	3/30/98
17:14	3/30/98
17:16	5/2/96
17:19	2/21/00
17:20	6/1/98
17:25	3/19/00
17:27	10/6/98
17:28	8/17/95
17:29	9/26/95
17:30	3/11/97
17:32	3/19/98
17:40	11/19/95
17:41	4/1/96
17:42	9/8/97

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	10/3/99
18:2	11/1/98
18:3	3/14/99
18:5	3/14/99
18:6	3/14/99
18:7	3/14/99
18:8	2/24/99
18:9	6/4/98
18:12	10/4/98
18:12A	10/4/98
18:14	10/4/98
18:15	10/4/98
18:16	10/4/98
18:17	10/4/98
18:18	3/14/99
18:18A	2/3/97
18:19	3/14/99
18:21	2/19/96
18:22	2/24/99
18:23	2/24/99

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N.J.A.C.	Expiration Date
18:23A	9/4/95
18:24	6/4/98
18:25	2/19/96
18:26	6/4/98
18:35	6/4/98
18:36	3/13/00
18:37	7/23/95
18:38	2/1/98

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:2	8/15/99
19:3	3/29/98
19:3A	11/4/96
19:3A-3	Exempt (28 C.F.R. Part 35)
19:3B	3/29/98
19:4	3/29/98
19:4A	3/29/98
19:5	11/7/99
19:6	5/6/96
19:8	5/17/98
19:9	9/13/98
19:10	7/28/99
19:11	8/20/95
19:12	7/17/96
19:14	8/20/95
19:16	7/17/96
19:17	6/7/98
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:30-7	Exempt (28 C.F.R. Part 35)
19:31	8/20/95
19:40	8/15/99
19:40-6	Exempt (28 C.F.R. Part 35)
19:41	4/13/00
19:42	8/15/95
19:43	12/21/97
19:44	12/15/96
19:45	8/15/97
19:46	4/15/98
19:47	4/15/96
19:48	8/15/98
19:49	9/18/97
19:50	12/15/98
19:51	8/15/96
19:53	12/15/95
19:54	12/15/99
19:55	1/19/98
19:61	3/2/97
19:65	10/5/97
19:75	1/11/99

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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 April 3, 1995 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.1995 d.1 means the first rule filed for 1995.

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 MARCH 20, 1995

NEXT UPDATE: SUPPLEMENT APRIL 17, 1995

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
26 N.J.R. 2167 and 2510	June 6, 1994	26 N.J.R. 4857 and 5138	December 19, 1994
26 N.J.R. 2511 and 2692	June 20, 1994	27 N.J.R. 1 and 262	January 3, 1995
26 N.J.R. 2693 and 2828	July 5, 1994	27 N.J.R. 263 and 410	January 17, 1995
26 N.J.R. 2829 and 3102	July 18, 1994	27 N.J.R. 411 and 606	February 6, 1995
26 N.J.R. 3103 and 3230	August 1, 1994	27 N.J.R. 607 and 790	February 21, 1995
26 N.J.R. 3231 and 3504	August 15, 1994	27 N.J.R. 791 and 966	March 6, 1995
26 N.J.R. 3505 and 3780	September 6, 1994	27 N.J.R. 967 and 1336	March 20, 1995
26 N.J.R. 3781 and 3916	September 19, 1994	27 N.J.R. 1337 and 1502	April 3, 1995
26 N.J.R. 3917 and 4120	October 3, 1994	27 N.J.R. 1503 and 1712	April 17, 1995
26 N.J.R. 4121 and 4244	October 17, 1994	27 N.J.R. 1713 and 1832	May 1, 1995
26 N.J.R. 4245 and 4470	November 7, 1994	27 N.J.R. 1833 and 2028	May 15, 1995
26 N.J.R. 4471 and 4720	November 21, 1994	27 N.J.R. 2029 and 2292	June 5, 1995
26 N.J.R. 4721 and 4856	December 5, 1994		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.2, 14.10, 14.14	Conduct of contested cases: fines for misconduct	27 N.J.R. 609(a)		
1:1-19.1	Settlements	27 N.J.R. 1343(a)		
1:7A	Department of Environmental Protection cases	26 N.J.R. 4124(a)	R.1995 d.184	27 N.J.R. 1399(a)
1:7A-1.1, 8.1	Department of Environmental Protection Cases: public hearing and extension of comment period	26 N.J.R. 4863(a)		
1:30-1.2, 3.1, 4.1	Agency rulemaking: Federal standards	27 N.J.R. 414(a)		
1:30-1.9	Agency rulemaking: document copying fees	27 N.J.R. 416(a)		

Most recent update to Title 1: TRANSMITTAL 1995-1 (supplement March 20, 1995)

AGRICULTURE—TITLE 2				
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)	R.1995 d.199	27 N.J.R. 1399(b)
2:24	Diseases of bees	27 N.J.R. 5(a)	R.1995 d.200	27 N.J.R. 1400(a)
2:32-2.22	Sire Stakes Program: qualifying standards	27 N.J.R. 969(a)	R.1995 d.276	27 N.J.R. 2179(a)
2:33	Agricultural fairs	27 N.J.R. 610(a)	R.1995 d.226	27 N.J.R. 1791(a)
2:52	Milk processors, dealers and subdealers	27 N.J.R. 1343(a)		
2:69-1.11	Commercial values of primary plant nutrients	27 N.J.R. 1344(a)		
2:76-3.3, 3.5, 3.6, 3.9, 3.10, 3.12	Creation of farmland preservation programs	27 N.J.R. 8(a)		
2:76-4.3, 4.5, 4.6, 4.9, 4.11	Creation of municipally approved farmland preservation programs	27 N.J.R. 10(a)		
2:76-6.2, 6.5, 6.6, 6.7, 6.9–6.18B	Acquisition of development easements	27 N.J.R. 13(a)		
2:90	State Soil Conservation Committee: soil erosion and sediment control; farmland preservation project cost-sharing	27 N.J.R. 1506(a)		
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3:23-2.1	Check cashing businesses	26 N.J.R. 4863(b)	R.1995 d.189	27 N.J.R. 1442(c)
3:24	Check cashing businesses	26 N.J.R. 4863(b)	R.1995 d.189	27 N.J.R. 1442(c)
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3:38-1.9	Branch office fee for mortgage bankers and brokers	27 N.J.R. 1507(a)		
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5:10-1.10	Maintenance of hotels and multiple dwellings: inspections	27 N.J.R. 1345(a)	R.1995 d.279	27 N.J.R. 2181(a)
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5:11-2.1, 3.7, 9.1, 9.2	Relocation assistance: eligibility of owner-occupants in code enforcement cases	27 N.J.R. 1844(a)		
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5:23-2.14, 4.18, 4.20	Uniform Construction Code: training for annual permit holders	27 N.J.R. 1716(a)		
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5:24	Condominium, fee simple and cooperative conversion and mobile home park retirement	27 N.J.R. 1718(a)		
5:27	Rooming and boarding houses	27 N.J.R. 1346(a)	R.1995 d.280	27 N.J.R. 2188(a)
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5:71	County offices on aging	27 N.J.R. 1719(a)		
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7:1L	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:2-17.1	State Park Service: Spring Meadow Golf Course fees	_____	_____	27 N.J.R. 1404(b)
7:7-1.3, 2.1, 2.2, 2.3, 4.2, 4.4–4.7, 4.10, 5.1, 7.1–7.4, App.	Coastal Permit Program	27 N.J.R. 1005(a)		
7:7A-7.4, 9.2	Freshwater wetlands protection: Statewide general permit and special activity waiver for single-family dwelling	27 N.J.R. 1851(a)		
7:7A-16.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:7E	Coastal zone management	27 N.J.R. 417(a)		
7:10-15.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:11-2.2, 2.3, 2.4, 2.10, 2.12	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System: sale of water	26 N.J.R. 4907(a)	R.1995 d.291	27 N.J.R. 2205(a)
7:11-4.3, 4.4, 4.9, 4.13	Manasquan Reservoir Water Supply System: sale of water	26 N.J.R. 4910(a)	R.1995 d.292	27 N.J.R. 2207(a)
7:13-7.1	Flood plain redelineation of Sparkill Brook within Rockleigh Borough, Bergen County	27 N.J.R. 1854(a)		
7:13-7.1	Flood plain redelineation of the East Branch Rahway River in Union County	27 N.J.R. 1855(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)	Expired	
7:14A-1.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:14A-1.8	NJPDES permit fees	27 N.J.R. 1028(a)		
7:14A-1.9, 2.1, 2.5, 2.14, 3.1, 3.8, 3.9, 3.12, App. A, B; 10.3, 14.8, App. H	Statewide Stormwater Permitting Program	27 N.J.R. 1857(a)		
7:14B-1.4	Underground storage tanks: administrative correction regarding applicability of rules	_____	_____	27 N.J.R. 1978(a)
7:14B-3.9	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:19-3.8	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:20	Dam safety standards	27 N.J.R. 795(a)	R.1995 d.266	27 N.J.R. 2210(a)
7:22	Financial assistance programs for wastewater treatment facilities	27 N.J.R. 1536(a)		
7:25-2	Use of land and water areas under control of Division of Fish, Game and Wildlife	27 N.J.R. 1890(a)		
7:25-4.18	Endangered and Nongame Species Advisory Committee: term limitations requirement	27 N.J.R. 797(a)		
7:25-5	1995-96 Game Code	27 N.J.R. 1897(a)		
7:25-18.1	Recreational summer flounder season: administrative change	_____	_____	27 N.J.R. 1793(a)
7:25-18.5	Lobster and fish pots: administrative correction regarding escape vents	_____	_____	27 N.J.R. 2212(a)
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7:25A	Oyster management and harvest	27 N.J.R. 798(a)	R.1995 d.250	27 N.J.R. 1979(a)
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7:26A-2.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:26B-1.10	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:26C	Contaminated sites remediation: Oversight Cost Formula rates	_____	_____	27 N.J.R. 1580(a)
7:27-8.1, 16.1, 17.1, 19.1, 21.1, 22.1, 23.2, 25.1	Definition of volatile organic compound: administrative correction	_____	_____	27 N.J.R. 1406(a)
7:27-8.11	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:27-15	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17, 16.18	Control and prohibition of air pollution by volatile organic compounds	26 N.J.R. 4478(a)	R.1995 d.255	27 N.J.R. 1979(b)
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	26 N.J.R. 3298(a)	R.1995 d.214	27 N.J.R. 1581(a)
7:27-22	Air pollution control: facility operating permits	27 N.J.R. 1040(a)		
7:27-22.1, 22.31	Air Quality Regulation Program: facility operating permit fees	27 N.J.R. 22(b)		
7:27-24	Volatile organic compounds: control and prohibition from consumer and commercial products	27 N.J.R. 1077(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)	Expired	
7:27-25.1, 25.3, 25.4, 25.8	Oxygenated fuels program	27 N.J.R. 787(a)	R.1995 d.236	27 N.J.R. 1794(b)
7:27-25.3	Oxygen program exemptions	26 N.J.R. 3835(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)	Expired	

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7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)	R.1994 d.537	26 N.J.R. 4355(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)	R.1995 d.214	27 N.J.R. 1581(a)
7:27A-3.10	Air pollution civil administrative penalties: administrative correction	_____	_____	27 N.J.R. 2212(b)
7:27B-3.1	Definition of volatile organic compound: administrative correction	_____	_____	27 N.J.R. 1406(a)
7:27B-4	Motor vehicle enhanced inspection and maintenance program	26 N.J.R. 3258(b)		
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7:28-48.7	Registration fees for non-ionizing radiation producing sources: administrative correction	27 N.J.R. 498(b)		
7:29	Noise control	27 N.J.R. 1091(a)		
7:30-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
7:31-1.1	Payment schedule for permit application fees	26 N.J.R. 3922(a)	R.1995 d.205	27 N.J.R. 1576(b)
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7:50-6 App. A	Pinelands Septic Dilution Model: administrative correction	_____	_____	27 N.J.R. 2212(c)
7:50-6.48	Pinelands Comprehensive Management Plan: administrative correction regarding source discharges	_____	_____	27 N.J.R. 1410(a)
7:50-9	Pinelands Comprehensive Management Plan: acquisition of properties with limited practical use	27 N.J.R. 1572(a)		
7:50-9	Pinelands Comprehensive Management Plan: rescheduled and relocated public hearing and extension of comment period regarding acquisition of properties of limited practical use	27 N.J.R. 1927(b)		
7:62	Landscape irrigation contractors	27 N.J.R. 1098(a)		

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8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
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8:19	Newborn Screening Program	27 N.J.R. 807(a)	R.1995 d.274	27 N.J.R. 2213(a)
8:20	Birth Defects Registry	27 N.J.R. 269(a)	R.1995 d.182	27 N.J.R. 1410(b)
8:33P	Designation of Level I and II trauma centers: certificate of need requirements	27 N.J.R. 1350(a)		
8:41-8.1, 10.1	Approved drug formulary for mobile intensive care units	27 N.J.R. 808(a)		
8:43E	Health care facilities: enforcement of licensure standards	26 N.J.R. 4527(a)	R.1995 d.198	27 N.J.R. 1411(a)
8:43G-5.1, 5.2	Hospital licensing standards: administrative change regarding smoke-free policy	_____	_____	27 N.J.R. 1615(a)
8:43G-5.2	Hospital licensing standards: administrative correction regarding smoke-free policy	_____	_____	27 N.J.R. 2215(a)
8:43G-6.3	Hospital licensing standards: administrative correction regarding anesthesia administration	_____	_____	27 N.J.R. 1800(a)
8:44	Operation of clinical laboratories	27 N.J.R. 626(a)	R.1995 d.239	27 N.J.R. 1985(a)
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)	Expired	
8:57	Communicable diseases	27 N.J.R. 420(a)	R.1995 d.240	27 N.J.R. 1987(a)
8:57-1	Reportable communicable diseases	27 N.J.R. 1987(a)	R.1995 d.277	27 N.J.R. 2216(a)
8:57-4	Immunization of children attending schools and preschool facilities	27 N.J.R. 270(a)	R.1995 d.201	27 N.J.R. 1417(a)
8:57-4.13	Rubella vaccination of children: administrative correction	_____	_____	27 N.J.R. 1801(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)		
8:57-6	Hepatitis Inoculation Fund (recodified as 8:57B)	27 N.J.R. 28(a)	R.1995 d.207	27 N.J.R. 1615(b)
8:57A	Cancer Registry	27 N.J.R. 629(a)	R.1995 d.241	27 N.J.R. 1988(a)
8:60	Asbestos licenses and permits	27 N.J.R. 71(a)	R.1995 d.193	27 N.J.R. 1465(a)
8:60-2.1	Asbestos licenses and permits: administrative corrections	_____	_____	27 N.J.R. 1806(a)
8:66	Repeal (see 8:66A)	27 N.J.R. 274(a)	R.1995 d.183	27 N.J.R. 1420(a)
8:66A	Intoxicated Driving Program	27 N.J.R. 274(a)	R.1995 d.183	27 N.J.R. 1420(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)

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8:71	Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a), 4388(a))	26 N.J.R. 1821(a)	R.1995 d.33	27 N.J.R. 357(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b), 4388(b), 27 N.J.R. 355(b))	26 N.J.R. 1822(a)	R.1995 d.178	27 N.J.R. 1300(a)
8:71	Interchangeable drug products (see 26 N.J.R. 3720(a), 4386(a))	26 N.J.R. 2723(a)	R.1995 d.35	27 N.J.R. 359(a)
8:71	Interchangeable drug products (see 26 N.J.R. 4390(a), 27 N.J.R. 357(b))	26 N.J.R. 3583(a)	R.1995 d.179	27 N.J.R. 1302(a)
8:71	Interchangeable drug products	26 N.J.R. 4288(a)	R.1995 d.39	27 N.J.R. 351(b)
8:71	Interchangeable drug products	26 N.J.R. 4293(a)	R.1995 d.30	27 N.J.R. 354(a)
8:71	Interchangeable drug products (see 27 N.J.R. 351(c))	26 N.J.R. 4294(a)	R.1995 d.180	27 N.J.R. 1303(a)
8:71	Interchangeable drug products	27 N.J.R. 30(a)	R.1995 d.177	27 N.J.R. 1305(a)
8:71	Interchangeable drug products	27 N.J.R. 810(a)		
8:71	Interchangeable drug products	27 N.J.R. 1723(a)		

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9:4-1.9, 5, 6, 7	County community colleges: policies and procedures	27 N.J.R. 1387(a)		
9:4-1.9, 5, 6, 7	Community colleges: policies and procedures (recodify as 9A:7-1.1, 2, 3, 4)	27 N.J.R. 1388(a)		
9:5-1	Repeal (see 9A:5)	27 N.J.R. 1727(a)		
9:6	State colleges	27 N.J.R. 1392(a)		
9:6	State colleges	27 N.J.R. 1395(a)		
9:6A	State college personnel	27 N.J.R. 1392(a)		
9:6A	State college personnel (recodify as 9A:6)	27 N.J.R. 1395(a)		
9:11	EOF Program (recodify as 9A:11)	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)
9:12	EOF Program (recodify as 9A:12)	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)
9A:5	Tuition residency requirements	27 N.J.R. 1727(a)		
9A:11	Educational Opportunity Fund Program	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)
9A:12	Educational Opportunity Fund Program	27 N.J.R. 812(a)	R.1995 d.248	27 N.J.R. 1993(a)

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10:15A-1.4	Child Care Services Manual: submitting vouchers for payment	27 N.J.R. 1928(a)		
10:17	Child placement rights	26 N.J.R. 1563(a)	R.1995 d.187	27 N.J.R. 1648(a)
10:19	Manual of Standards for Juvenile Detention Facilities	27 N.J.R. 1101(a)	R.1995 d.293	27 N.J.R. 2221(a)
10:37-5.28–5.34	Repeal (see 10:37E)	26 N.J.R. 3608(a)		
10:37-5.46–5.51	Repeal (see 10:37F)	26 N.J.R. 4547(a)		
10:37E	Division of Mental Health and Hospitals: outpatient service standards	26 N.J.R. 3608(a)		
10:37F	Adult Partial Care Services for individuals with severe and persistent mental illness	26 N.J.R. 4547(a)		
10:37G	Division of Mental Health and Hospitals: client liaison services	27 N.J.R. 429(a)		
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10:49-7.3	Medicaid program: third party liability benefits	27 N.J.R. 1512(b)		
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10:55	Medicaid program: Prosthetic and Orthotic Services Manual	26 N.J.R. 4979(a)	R.1995 d.185	27 N.J.R. 1446(a)
10:59-1.9	Medical Supplier Manual: reimbursement for certain services	26 N.J.R. 2839(a)		
10:60-1.1, 1.2, 1.4, 1.13, 4.2	Home Care Services: EPSDT private duty nursing services	27 N.J.R. 279(a)		
10:64-1.3	Hearing Aid Services: optional audiological examinations	27 N.J.R. 287(a)		
10:74	Managed health care services for Medicaid eligibles	27 N.J.R. 853(a)		
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)	R.1995 d.271	27 N.J.R. 2223(a)
10:81-14.18	Public Assistance Manual: submitting vouchers for payment	27 N.J.R. 1929(b)		

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10:85-3.2	General Assistance program: fingerimaging procedures	27 N.J.R. 864(a)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)	Expired	
10:86-10.3	Family Development Program Manual: submitting vouchers for payment	27 N.J.R. 1930(a)		
10:88	Families First Program	27 N.J.R. 1110(a)	R.1995 d.294	27 N.J.R. 2223(b)
10:89-2.3, 3.1	Home Energy Assistance program: income eligibility; automatic payments	27 N.J.R. 942(a)	R.1995 d.246	27 N.J.R. 2003(a)
10:91	Commission for the Blind and Visually Impaired: organization and general policy	27 N.J.R. 1931(a)		
10:121	Division Youth and Family Services: standards regarding adoptions	27 N.J.R. 1122(a)		
10:121A-1.5, 1.6, 1.7, 1.8, 3.3, 3.5, 3.6, 4.2, 4.4, 5.3, 5.4, 5.6, 5.8, 5.9	Division of Youth and Family Services: Manual of Requirements for Adoption Agencies	27 N.J.R. 661(a)		
10:123	Social Services Program for Individuals and Families	27 N.J.R. 1123(a)		
10:125	Division of Youth and Family Services: capital funding program for community-based facilities	27 N.J.R. 431(a)	R.1995 d.260	27 N.J.R. 2232(a)
10:126-1.2, 1.3, 2.4, 4.6, 5.3, 5.7, 5.8	Family day care provider registration: child abuse central registry searches; registration denial appeal process	27 N.J.R. 1351(a)		
10:126A	Division of Youth and Family Services: utilization of family day care providers	27 N.J.R. 432(a)	R.1995 d.227	27 N.J.R. 1801(b)
10:129	Division of Youth and Family Services: child abuse and neglect cases	27 N.J.R. 1125(a)		
10:129A	Child protective services investigations and determinations of abuse and neglect	26 N.J.R. 3700(a)		
10:130	Shelters for victims of domestic violence: standards	27 N.J.R. 1126(a)		
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10A:31	Adult county correctional facilities	27 N.J.R. 1728(a)		
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11:1-38	Oversight of firemen's relief associations	27 N.J.R. 634(a)		
11:1-39	Insurer disclosure of material transactions	27 N.J.R. 816(a)	R.1995 d.234	27 N.J.R. 1802(a)
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11:3-15.6	Private passenger automobile insurance: standard minimum premium quotation	27 N.J.R. 1354(a)		
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11:3-16.7	Private passenger automobile insurance: rating programs for physical damage coverages	27 N.J.R. 1356(a)	R.1995 d.288	27 N.J.R. 2232(b)
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11:3-45	Private passenger automobile insurance: annual premium survey	27 N.J.R. 289(a)	R.1995 d.235	27 N.J.R. 1803(a)
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11:21-1.2, 7.4, 8.3	Small Employer Health Benefits Program: summary of comments and responses regarding stop loss coverage	_____	_____	27 N.J.R. 1618(c)
11:21-2.5	Small Employer Health Benefits Program: Board authorization of assessments and expenditure of program funds	27 N.J.R. 438(a)	R.1995 d.223	27 N.J.R. 1805(a)
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11:21-4.4, Exh. DD	Small Employer Health Benefits Program: policy forms; compliance and variability rider	27 N.J.R. 439(a)		
11:21-7.4	Small Employer Health Benefits Program: carriers acting as administrators for small employers	26 N.J.R. 3117(a)		
11:21-17.3, Exh. BB, EE	Small Employer Health Benefits Program: certification of promotional and marketing material	27 N.J.R. 819(a)		
11:21-19, App. Exh. EE	Small Employer Health Benefits Program: Premium Comparison Survey	27 N.J.R. 1127(b)	R.1995 d.289	27 N.J.R. 2233(a)

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12A:80	New Jersey Urban Development Corporation rules	27 N.J.R. 1954(a)		

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13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)	R.1995 d.243	27 N.J.R. 2005(a)
13:13	Division on Civil Rights: discrimination on the basis of handicap	27 N.J.R. 1954(b)		
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13:35-2B.2, 2B.13–2B.16, 6.13	Board of Medical Examiners: temporary licensure of physician assistants	27 N.J.R. 1526(a)		
13:35-2B.4	Board of Medical Examiners: physician assistant scope of practice	27 N.J.R. 1956(a)		
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13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	26 N.J.R. 3932(b)		
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13:54-1.15	Division of State Police: confidentiality of firearms permits, ID cards, licenses, and background investigations	27 N.J.R. 305(a)	R.1995 d.233	27 N.J.R. 1807(a)
13:61	Division of State Police: boat safety course	27 N.J.R. 642(a)	R.1995 d.238	27 N.J.R. 1807(b)
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13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)	Expired	
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)	R.1995 d.298	27 N.J.R. 2243(b)
13:70-29.50	Thoroughbred racing: Daily Triple	27 N.J.R. 306(a)	R.1995 d.211	27 N.J.R. 1642(a)
13:71-16.5, 16.12	Harness racing: entries; limitations of entries by trainers	27 N.J.R. 466(a)		
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13:71-23.8	Harness racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)	R.1995 d.297	27 N.J.R. 2244(b)
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)	Expired	
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13:82-8.6, 8.13, 8.19, 9.1	Division of Motor Vehicles: regulatory fees	27 N.J.R. 1521(b)		
13:85	Motorcycle Safety Education Program	27 N.J.R. 1145(a)	R.1995 d.273	27 N.J.R. 2244(c)

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